

DEPARTMENT OF EDUCATION**34 CFR Parts 600, 602, 603, 654, 668, and 674**

RIN 1840-AD36, 1840-AD37

[Docket ID ED-2018-OPE-0076]

Student Assistance General Provisions, The Secretary's Recognition of Accrediting Agencies, The Secretary's Recognition Procedures for State Agencies**AGENCY:** Office of Postsecondary Education, Department of Education.**ACTION:** Final regulations.

SUMMARY: The Secretary amends the regulations governing the recognition of accrediting agencies, certain student assistance general provisions, and institutional eligibility, as well as makes various technical corrections.

DATES: These regulations are effective July 1, 2020.

Implementation date: For the implementation dates of the included regulatory provisions, see the *Implementation Date of These Regulations* section of this document.

FOR FURTHER INFORMATION CONTACT: For further information related to recognition of accrediting agencies, Herman Bounds at herman.bounds@ed.gov or (202) 453-7615 or Elizabeth Daggett at elizabeth.daggett@ed.gov or (202) 453-6190. For further information related to State authorization, Scott Filter at scott.filter@ed.gov or (202) 453-7249 or Sophia McArdle at sophia.mcardle@ed.gov or (202) 453-6318. For all other information related to this document, Barbara Hoblitzell at barbara.hoblitzell@ed.gov or (202) 453-7583 or Annmarie Weisman at annmarie.weisman@ed.gov or (202) 453-6712. If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll-free, at (800) 877-8339.

SUPPLEMENTARY INFORMATION:**Executive Summary**

Purpose of This Regulatory Action: Through this regulatory action, the Department of Education (Department or we): (1) Strengthens the regulatory triad by more clearly defining the roles and responsibilities of accrediting agencies, States, and the Department in oversight of institutions participating in the Federal Student Aid programs authorized under title IV of the Higher Education Act of 1965, as amended (title IV, HEA programs); (2) establishes “substantial compliance” with regard to recognition criteria as the standard for

agency recognition; (3) increases academic and career mobility for students by eliminating artificial regulatory barriers to work in a profession; (4) provides greater flexibility for institutions to engage in innovative educational practices more expeditiously and meet local and national workforce needs; (5) protects institutional autonomy, honors individual campus missions, and affords institutions the opportunity to build campus communities based upon shared values; (6) modifies “substantive change” requirements to provide greater flexibility to institutions to innovate and respond to the needs of students and employers, while maintaining strict agency oversight in instances of more complicated or higher risk changes in institutional mission, program mix, or level of credential offered; (7) clarifies the Department’s accrediting agency recognition process, including accurate recognition of the geographic area within which an agency conducts business; (8) encourages and enables accrediting agencies to support innovative practices, and provides support to accrediting agencies when they take adverse actions; and (9) modifies the requirements for State authorization to clarify the responsibilities of institutions and States regarding students enrolled in distance education programs and students enrolled in programs that lead to licensure and certification.

Summary of the Major Provisions of This Regulatory Action

These regulations—

- Revise the requirements for accrediting agencies in their oversight of member institutions and programs to be less prescriptive and provide greater autonomy and flexibility to facilitate agility and responsiveness and promote innovation;
- Revise the criteria used by the Secretary to recognize accrediting agencies to focus on education quality and allow competition;
- Revise the Department’s process for recognition and review of accrediting agencies;
- Clarify the core oversight responsibilities among each entity in the regulatory triad—accrediting agencies, States, and the Department—to hold institutions accountable;
- Establish the roles and responsibilities of institutions and accrediting agencies in the teach-out process;
- Establish that the Department recognizes an institution’s legal authorization to operate postsecondary educational programs when it is exempt

from State authorization under the State constitution or by State law as a religious institution with a religious mission;

- Revise the State authorization requirements for institutions offering distance education or correspondence courses; and
- Remove the regulations related to the Robert C. Byrd Honors Scholarship Program, which has not received funding in many years.

Authority for this Regulatory Action: Section 410 of the General Education Provisions Act provides the Secretary with authority to make, promulgate, issue, rescind, and amend rules and regulations governing the manner of operations of, and governing the applicable programs administered by, the Department. 20 U.S.C. 1221e-3. Furthermore, under section 414 of the Department of Education Organization Act, the Secretary is authorized to prescribe such rules and regulations as the Secretary determines necessary or appropriate to administer and manage the functions of the Secretary or the Department. 20 U.S.C. 3474. These authorities, together with the provisions in the HEA, permit the Secretary to disclose information about title IV, HEA programs to students, prospective students, and their families, the public, taxpayers, the Government, and institutions. Further, section 431 of the Department of Education Organization Act provides authority to the Secretary, in relevant part, to inform the public about federally supported education programs and collect data and information on applicable programs for the purpose of obtaining objective measurements of the effectiveness of such programs in achieving their intended purposes. 20 U.S.C. 1231a.

Costs and Benefits: As further detailed in the Regulatory Impact Analysis, the benefits of these regulations include increasing transparency and improving institutional access for students, honoring the autonomy and independence of agencies and institutions, restoring focus and clarity to the Department’s agency recognition process, integrating risk-based review into the recognition process, improving teach-outs for students at closed or closing institutions, allowing accrediting agencies to focus greater attention on student learning and the student experience, and restoring public trust in the rigor of the accreditation process and the value of postsecondary education. These regulations reduce regulatory burden on institutions that wish to develop and implement innovative programs and on accrediting agencies because of greater flexibility to

make low-risk decisions at the staff level. In addition, these regulations significantly reduce the regulatory burden associated with preparing and submitting accrediting agency petitions for recognition or renewal of recognition since some of this review will now occur through a site visit, thereby eliminating the need to upload perhaps thousands of pages of documents.

The potential costs associated with the regulations include some burden associated with required disclosures and the need for accrediting agencies to develop new policies for accreditation decision-making, enforcement of standards, and substantive change reporting requirements. While not the anticipated or desired outcome, it is also possible that agencies would avail themselves of reduced regulatory burden without redeploying resources towards greater oversight of program quality, student learning, and the student experience at institutions and programs; or some agencies could lower their standards. It is, therefore, incumbent on the Department and National Advisory Committee on Institutional Quality and Integrity (NACIQI or Advisory Committee) to use new accountability and oversight tools provided for in these regulations to properly mitigate these risks and monitor agencies to ensure they are upholding their mission-based standards for educational quality.

Implementation Date of These Regulations: Section 482(c) of the HEA requires that we publish regulations affecting programs under title IV of the HEA in final form by November 1, prior to the start of the award year (July 1) to which they apply. However, that section also permits the Secretary to designate any regulation as one that an entity subject to the regulations may choose to implement earlier and the conditions for early implementation.

The Secretary is exercising her authority under section 482(c) of the HEA to designate the following new regulations at title 34 of the Code of Federal Regulations included in this document for early implementation beginning on November 1, 2019, at the discretion of each institution, or each agency, as appropriate:

- (1) Section 600.2.
- (2) Section 600.9.
- (3) Section 668.43.
- (4) Section 668.50.

The final regulations included in this document are effective July 1, 2020.

Public Comments: In response to our invitation in the notice of proposed rulemaking (NPRM) published in the **Federal Register** on June 12, 2019 (84 FR 27404), we received 195 comments

on the proposed regulations. We do not discuss comments or recommendations that are beyond the scope of this regulatory action or that would require statutory change.

Analysis of Comments and Changes

We developed these regulations through negotiated rulemaking. Section 492 of the HEA requires that, before publishing any proposed regulations to implement programs under title IV of the HEA, the Secretary must obtain public involvement in the development of the proposed regulations. After obtaining advice and recommendations, the Secretary must conduct a negotiated rulemaking process to develop the proposed regulations. The negotiated rulemaking committee reached consensus on the proposed regulations that we published on June 12, 2019. The Secretary invited comments on the proposed regulations by July 12, 2019, and 195 parties submitted comments. An analysis of the comments and of the changes in the regulations since publication of the NPRM follows.

We group major issues according to subject, with appropriate sections of the regulations referenced in parentheses. We discuss other substantive issues under the sections of the regulations to which they pertain. Generally, we do not address minor, non-substantive changes, recommended changes that the law does not authorize the Secretary to make, or comments pertaining to operational processes. We also do not address comments pertaining to issues that were not within the scope of the NPRM.

General Comments

Comments: Several commenters supported the Department's proposals to amend the regulations governing the recognition of accrediting agencies, certain student assistance general provisions, and institutional eligibility. Specific support was conveyed regarding regulations that advance innovation, strengthen student protections through enhanced disclosures and teach-out requirements, preserve State reciprocity agreements, and mitigate the unjustified stigma that has been associated with attending nationally accredited institutions and the impact that has had on the transferability of credits students earned at these institutions. One commenter opined that trade schools, community colleges, apprenticeships, and other programs that are significantly shorter and less costly than a traditional bachelor's degree are alternative pathways for students' financial stability and success. The commenter

stated that these programs deserve the same respect as programs at prestigious institutions, and that the proposed regulations would make dramatic steps forward for this often-overlooked form of higher education.

Discussion: We appreciate the commenters' support.

Changes: None.

Comments: Many commenters expressed general opposition to the proposed regulations, suggesting that the Department was weakening both its oversight of accrediting agencies and the accrediting agencies' oversight of institutions, reducing transparency, and putting students and taxpayers at risk. Others stated that we should withdraw the proposed regulations. The commenters were concerned that the proposed changes would erode the value of accreditation, make it difficult for prospective students to assess the quality of an institution of higher education, render postsecondary credentials and degrees meaningless, and negatively impact the competitiveness of the United States in the global economy.

Discussion: In response to the commenters requesting that the proposed regulations be strengthened, completely revised, or withdrawn, we believe these final regulations strike the right balance between our goals of encouraging innovation and ensuring accountability, transparency, clarity, and ease of administration, while providing sufficient oversight of accrediting agencies and institutions and, at the same time, protecting students, the Federal government, and taxpayers. These regulations enable accrediting agencies and institutions to be nimbler and more responsive to changing economic conditions and workforce demands, and they permit agencies to convey their intention to take negative action earlier by providing a period of time during which an institution may remain accredited and still participate in title IV programs in order to graduate students near the end of their programs or help students transfer to new institutions. The changes to the criteria used by the Secretary to recognize accrediting agencies by placing increased focus on education quality strengthen the value and effectiveness of accreditation. Additional tools available to accrediting agencies to hold institutions and programs accountable will also increase the value of accreditation. We believe that the regulations are in the best interest of students, consumers, and taxpayers, and will improve the quality of the education offered at institutions by ensuring that all institutions and

programs meet a threshold of quality. Finally, we have taken heed of the Academy of Arts and Sciences recommendation in *The Future of Undergraduate Education*, that “while the most vigorous critique of regulation has focused on federal rules, state agencies and accrediting bodies should also engage in a thoughtful review to identify regulations and other policy barriers that may impede the spread of innovation across colleges and universities. We should review and roll back, where possible, regulations that do not contribute to protecting students by insisting that providers meet rigorous quality standards. Conversely, we should direct greater regulatory attention and compliance at institutions that are chronically poor performers. A better relationship between important regulatory protections and the promotion of innovation can be achieved through thoughtful action at the State, Federal, accreditation, and institutional level.”¹ This sentiment is endorsed by the Task Force on Federal Regulation of Higher Education, a group of college and university presidents and chancellors, created by a bipartisan group of U.S. Senators, who recently released an analysis recommending that regulation not related directly to institutional quality and improvement be identified and, where possible, eliminated.²

Changes: None.

Comments: Several commenters stated that the negotiated rulemaking process, by which we developed the proposed regulations, was flawed. Many commenters opined that condensing an expansive agenda with over a dozen topics into a single negotiated rulemaking provided inadequate time for the full negotiated rulemaking committee to meaningfully discuss the complete scope of regulatory changes. Some commenters objected to the Department’s decision to use subcommittees, with some objecting specifically to the use of a subcommittee to develop definitions that informed the proposed changes to the accreditation regulations. Others objected to the simultaneous scheduling of subcommittee meetings, asserting that this made it impossible for negotiators to physically attend all meetings, and opined that the subcommittee meetings were not open to the public, as required by the HEA. Another commenter wrote in support of the Department’s use of

subcommittees, noting that they served to provide a foundation on the issues for which the negotiating committee was able to thoughtfully consider and develop the language found in the proposed regulations.

Discussion: We disagree with the commenters who said that the Department’s rulemaking process was flawed. It is not uncommon for the Department to address multiple topics with a single negotiated rulemaking committee,³ nor was this the first time that the Department utilized non-voting subcommittees to delve more deeply into a specific topic and provide recommendations to the main committee. The recommendations of the subcommittees were not binding on the members of the main committee who were free to discuss the issues in as much detail as they required to come to agreement. For example, the members of the main committee discussed in detail and made edits to the recommended definitions of terms provided to them by the subcommittee before reaching consensus.

Although the subcommittee meetings were scheduled simultaneously, the negotiators and the public were provided both live-streamed and recorded access to the subcommittees’ deliberations, fulfilling the legal requirements of HEA section 492. Finally, we believe that there was enough time for the full negotiated rulemaking committee to meaningfully discuss the complete scope of regulatory changes. Specifically, the committee voted to extend the meeting times of each of the four days in the third session by two hours. The committee also voted to extend negotiations to include a fourth session of four additional days, which also included extended hours.

Changes: None.

Comments: Some commenters expressed concern that States lacked adequate representation on the negotiating committee, noting that a representative from the State Higher Education Executive Officers (SHEEO) was added following self-nomination, and that the Department cast the sole dissenting vote on the self-nomination of a representative of State attorneys general (AGs), suggesting that a critical consumer protection and State enforcement voice was omitted from the discussion. A group of commenters

echoed this complaint, adding that the omission of State AGs prevented a critical voice for protecting students from being heard. Other commenters asserted that the interests of students, student veterans, and consumers were not adequately represented. Another commenter stated that no single member of the committee had expertise on all topics under consideration, asserting that section 492 of the HEA, 20 U.S.C. 1098a(b)(1), requires negotiators to have expertise in all subjects under negotiation.

Discussion: The negotiated rulemaking process ensures that we consider a broad range of interests in the development of regulations. Specifically, negotiated rulemaking is designed to enhance the rulemaking process through the involvement of all parties significantly affected by the topics for which we will develop the regulations. Accordingly, section 492(b)(1) of the HEA, 20 U.S.C. 1098a(b)(1), requires that the Department choose negotiators from groups representing many different constituencies. The Department selects individuals with demonstrated expertise or experience in the relevant subjects under negotiation, reflecting the diversity of higher education interests and stakeholder groups, large and small, national, State, and local. In addition, the Department selects negotiators with the goal of providing adequate representation for the affected parties while keeping the size of the committee manageable.

Students, student veterans, and consumers were all ably represented by non-Federal negotiators on the negotiating committee with primary and alternate representatives for each of these constituencies, as well as in the subcommittees.

The Department’s decision to not include a representative of State AGs on the main committee was predicated on the fact that the topics for negotiation did not include issues that are specifically related to their work. In addition, several negotiators commented that adding a State AG to the full committee would have created conflicts and perhaps even silenced discussion, since some negotiators were the subject of one or more State AG inquiries or investigations. In fact, there were multiple members of the committee who rejected the idea of adding a State AG to the committee during the first two attempts to vote on the self-nomination of a State AG. In some prior rulemakings, the Department has determined that State AGs were an affected constituency. In those cases, the Department has included them as

¹ amacad.org/sites/default/files/academy/multimedia/pdfs/publications/researchpapersmonographs/CFUE_Final-Report/Future-of-Undergraduate-Education.pdf.

² acenet.edu/news-room/Documents/Higher-Education-Regulations-Task-Force-Report.pdf.

³ www.federalregister.gov/documents/2013/11/20/2013-27850/negotiated-rulemaking-committee-negotiator-nominations-and-schedule-of-committee-meetings-title-iv and www.federalregister.gov/documents/2014/12/19/2014-29734/negotiated-rulemaking-committee-negotiator-nominations-and-schedule-of-committee-meetings-william-d.

negotiators. However, the Department did not believe that State AGs were a particularly relevant constituency group for this rulemaking effort and determined that SHEEOs were the more appropriate representative of State interests, especially with regard to the topics negotiated. However, at the request of an AG who nominated himself and an additional AG, the committee voted to add a representative of State AGs to the Distance Education and Innovation subcommittee and provided the opportunity for that representative to contribute to the deliberations that informed the main committee's work.

It would be highly unusual for any individual negotiator to have expertise on all the topics under consideration in any negotiated rulemaking. The Department relies upon the collective expertise of the non-Federal negotiators to inform the discussions and deliberations, recognizing that some members of the committee will be more knowledgeable about certain topics or elements of topics than others based on their area of expertise and the constituency they represent. The HEA does not require the Department to select specific entities or individuals to be on the committee, nor does it require non-Federal negotiators be an expert in all areas under discussion, but rather, that they are "individuals with demonstrated expertise or experience in the relevant subjects under negotiation, reflecting the diversity in the industry, representing both large and small participants, as well as individuals serving local areas and national markets."⁴ Non-Federal negotiators representing students, student veterans, and consumers, for example, provide important perspectives on this and other negotiated rulemaking committees, but are unlikely to have the same kind of expertise as financial aid administrators. The Department agrees that it overlooked an important member of the triad by inadvertently neglecting to include a representative of the SHEEOs as one of the categories of negotiators required for this rulemaking. The Department appreciates the nomination of a representative of this constituency and the support of the other negotiators to include him as a non-Federal negotiator.

Changes: None.

Comments: A group of commenters stated that the negotiated rulemaking process failed to provide students and consumers with enough opportunity to be heard.

Discussion: We believe that the negotiated rulemaking process provided students and consumers with sufficient opportunity to be heard. The negotiated rulemaking committee included primary and alternate negotiators representing students, student veterans, and consumer advocates. Moreover, the Department conducted three public hearings before the negotiated rulemaking began and provided time for public comment on each of the 12 days the main committee met.

Changes: None.

Comments: Several commenters asserted that the Department failed to provide evidence to support the need for the proposed regulatory changes during the negotiated rulemaking. Several commenters objected to the proposed changes that affect religious institutions of higher education, asserting that the Department had failed to adequately substantiate the need for such changes. Another commenter stated that the Department failed to present enough evidence that accreditation is a barrier to innovation. One commenter petitioned for correction and disclosure under the Information Quality Act (IQA), arguing that the Department failed to disclose underlying sources or methodologies to support our policy proposals.

Discussion: We disagree with the commenters who stated that the Department failed to provide data or evidence to support the need for the proposed regulatory changes during the negotiated rulemaking. We acknowledge that the Department was unable to fulfill several of the specific data requests made by negotiators because they sought information that is not available. The changes to the regulations are based on many factors, including feedback we received from the public, studies conducted by higher education associations, and emerging trends in postsecondary education. Specifically, the Department developed a list of proposed regulatory provisions based on advice and recommendations submitted by individuals and organizations as testimony in a series of three public hearings in September of 2018, as well as written comments submitted directly to the Department. Department staff also identified topics for discussion and negotiation. We developed the proposed regulations that we negotiated during negotiated rulemaking with specific objectives for improvement, including updating the requirements for accrediting agencies in their oversight of member institutions or programs; establishing requirements for accrediting agencies to honor institutional mission; revising the

criteria used by the Secretary to recognize accrediting agencies, emphasizing criteria that focus on educational quality; encouraging accrediting agencies and States that collect job placement data to do so using publicly available administrative datasets to increase their reliability and comparability; simplifying the Department's process for recognition and review of accrediting agencies; and promoting greater access for students to high-quality, innovative programs.

Changes: None.

Comments: An association and other commenters asserted that the decision to publish three separate NPRMs, rather than a single NPRM encompassing the entirety of the consensus language, made it impossible to submit informed comments on the partial provisions included because the public is unaware of other changes the Department intends to propose to related provisions on the agenda from this rulemaking. Another commenter asserted that there is no guarantee that the Department will propose the remaining regulations from the negotiation's consensus, suggesting that this would prevent the proposed regulations from functioning coherently.

Discussion: It is possible for members of the public to submit informed comments on the provisions that we included in the NPRM. We discussed and negotiated the topics in the proposed regulations included in the NPRM in their entirety during negotiated rulemaking. As the rulemaking sessions considered numerous topics, we separated the subject matter into groups. We included one set of topics in the first NPRM and plan to publish two additional NPRMs including the remaining topics within the next few months. Moreover, because the negotiated rulemaking committee reached consensus, the totality of the proposed regulatory changes was available to the public at the conclusion of the negotiations.

We appreciate commenters' concerns about how these regulations would function without the other regulatory pieces moving forward. However, since we achieved consensus on all topics included in negotiated rulemaking, we anticipate that the other regulations that were part of this rulemaking effort will similarly become final regulations soon.

The preparation of the NPRM included a review of other regulations in the consensus language that were dependent on the accreditation regulations, and those sections of the amended regulations were included in this regulatory package. These included any regulatory changes to definitions and regulations pertaining to State

⁴ HEA section 492, 20 U.S.C. 1098a(b)(1).

authorization of institutions and programs.

Changes: None.

Comments: One commenter noted that the final vote occurred with little time left to negotiate, rushing a consensus vote.

Discussion: The final vote in negotiated rulemaking frequently occurs at the end of the last day of negotiations. Negotiators who are not satisfied with the proposed regulations when the final vote occurs may vote against consensus or withhold their support.

Changes: None.

Comments: Some commenters alleged that negotiators who opposed the Department's proposed regulations were coerced into reaching consensus by other negotiators who suggested that, absent consensus, the Department would propose regulations that were less reflective of the negotiators' interests.

Discussion: The Department acknowledges that negotiated rulemaking can be a stressful endeavor, as each member of the committee works hard to represent the best interests of their constituency, and, by virtue of its design, consensus requires a give-and-take from all parties. However, primary committee members have independent authority to vote and should do so in keeping with their assessment of the proposed regulatory changes. Although it is true that, absent consensus, the Department may propose regulations that differ from the language developed by the negotiating committee, those proposed regulations would still be subject to public comment and could change based on that input.

Changes: None.

Comments: Some commenters opined that the public comment period was too short and did not permit a meaningful opportunity to comment, noting that when a proposed regulation—such as this one—is classified as “economically significant” and “major” by the Office of Information and Regulatory Affairs, section 6(a) of Executive Order 12866 requires the Department to “afford the meaningful opportunity to comment on any proposed regulation, which in most cases should include a comment period of not less than 60 days.” These commenters noted that the comment period included a Federal holiday and eight weekend days.

Discussion: We believe that the 30-day public comment period was an adequate time period for interested parties to submit comments. Because we reached consensus during negotiated rulemaking, the proposed regulatory language was available to the public at the conclusion of the final negotiating

session, which afforded interested parties additional time to begin formulating their comments.

Prior to issuing the proposed regulations, the Department conducted two public hearings and four negotiated rulemaking sessions, where stakeholders and members of the public had an opportunity to weigh in on the development of much of the language reflected in the proposed regulations. In addition, we believe that the 30-day public comment period was necessary to allow us to meet the HEA's master calendar requirements. Under those requirements, the Department must publish final regulations by November 1, 2019, for them to be effective on July 1, 2020. The recognition process for accrediting agencies is lengthy and the changes to these regulations will require significant planning and coordination on the part of agencies and Department staff. Delaying the effective date of these regulations would unnecessarily delay the realization of the benefits associated with these changes.

Changes: None.

Institutional Eligibility

Definitions (§ 600.2)

Comments: Several commenters expressed support for the Department's proposed addition of a definition of “additional location” and its proposed revision of the term “branch campus,” indicating that the clarifications provided in those definitions resolved confusion regarding the two terms.

Several other commenters expressed support for the student protections included in the proposed definitions of “teach-out” and “teach-out agreement,” including prohibitions on misrepresentation of the nature of teach-out plans, teach-out agreements, and transfer of credit. The commenters also supported the proposed stipulation in the definition of “teach-out” that we should always permit a student to access a closed school discharge if the student chooses not to pursue the teach-out option.

Discussion: The Department thanks the commenters for their support. After further review, the Department is making minor clarifications to the definition of “teach-out” in § 600.2. First, we are clarifying that a teach-out is a process rather than a time period. Because teach-outs can continue for years to allow every enrolled student the opportunity to complete his or her program, it is important to clarify that it is the set of activities that define a teach-out, not necessarily the period of time.

We are also removing from the definition language that asserts that a student who chooses at the time of the teach-out announcement to leave the school and pursue a closed school loan discharge is able to do so, as this is not a definitional issue. Students who withdraw from a closing school may still be eligible for a closed school loan discharge when the formal teach-out is not completed until well after the 180 days generally associated with closed school loan forgiveness. Section 685.214(c) affirms that a borrower may be eligible for a closed school loan discharge when the borrower's school closes and the borrower does not complete the program of study or a comparable program through a teach-out at another school or by transferring academic credits or hours earned at the closed school to another school.

While not a change, we are emphasizing in § 668.26(e)(2) that an institution is prohibited from misrepresenting the nature of its teach-out plans, teach-out agreements, and transfer of credit, and that any such misrepresentation may provide the basis for a borrower's claim of defense to repayment.

Changes: We have modified the wording of the definition of “teach-out” in § 600.2 to clarify that it is an activity, rather than a period of time. The teach-out activity may be conducted by the closing institution in order to provide an opportunity to enrolled students to complete their programs or may be conducted by other institutions who permit students from the closing or closed institution to complete their programs at their institution.

Comments: Several commenters requested additional clarification regarding the definition of “additional location,” indicating that confusion remained regarding how to apply the definition to an urban campus where buildings are located close together, but not directly adjacent to one another. One commenter noted as an example that some buildings on an urban campus might be on the same city block, others might be nearby, while still others could be a 30-minute drive or more. The commenter offered another example of a location that was in a different State than the main campus yet separated from the main campus by only a few miles. The commenter stated that it was unclear whether the Department would consider any of those locations a “facility that is geographically apart” from the main campus.

Another commenter noted that the regulations did not require State authorizing agencies to adopt similar definitions of the terms “branch

campus” and “additional location” and noted that any such requirements could have significant impacts on States’ authorizing and approval processes.

Discussion: The Department relies upon the reasonable judgment of the institution and its accrediting agency to determine whether a facility is “geographically apart” from the institution’s main campus. The Department agrees that its regulations do not require State authorizing agencies to define “branch campus” or “additional location” the same way the defines Department defines those terms. The Department does not have the authority to impose its definitions for these terms on States but encourages States to adopt conforming definitions to reduce confusion.

Changes: None.

Comments: One commenter requested that the Department explain the connection between an institution’s main campus and a “branch campus.” The commenter noted that the definition contains many requirements that are characteristic of an independent institution, including an independent fundraising and corporate structure, and stated that it was therefore unclear what relationship such a campus should have with its parent institution.

Discussion: A “branch campus” is a type of additional location that meets specific criteria, including retaining permanence and autonomy with respect to faculty, administration, and budgetary and hiring authority. The Department does not require any specific type of connection between a main campus and a branch campus except that both campuses must be accredited as a single entity and both must share the fiduciary responsibility for administration of the title IV, HEA programs. We consider a campus that is separately accredited to be a standalone institution for purposes of eligibility for the title IV, HEA programs. Coordination between a main campus and a branch campus remains at the institution’s discretion and is subject to any applicable standards set by its accrediting agency or State authorizing agency.

Changes: None.

Comments: One commenter objected to the proposed definitions of “additional location” and “branch campus” on the grounds that the Department has failed to provide any examples of “occasional inconsistent usage,” or any data about the problems caused by such usage that would warrant making these revisions to current regulations.

Discussion: As explained in the preamble to the NPRM (page 27411), the

Department’s reason for adding a definition of “additional location” and revising the definition of “branch campus” was to avoid confusion caused by inconsistent usage among the Department, States, and various accrediting agencies. Clear definitions of “additional location” and “branch campus” will promote consistency, improve the efficiency of Department, State, and accrediting agency review of applications to add additional locations or branch campuses, and ensure fair and equitable treatment of those applications.

Regarding the commenter’s assertion that the Department should provide examples of where inconsistencies in the review of additional locations or branch campuses occurred, as well as other unspecified data, the Department does not characterize specific eligibility decisions related to additional locations and branch campuses as “inconsistencies” for inclusion on a database (or other list) that we could query for this purpose. However, we are aware of accrediting agencies that use the term “branch campus” for campuses that the Department considers to be additional locations, though we are not sure how many campuses this impacts. Notwithstanding the absence of such data, we do not believe a report such as the one requested by the commenter is necessary to justify these proposed revisions, which will codify long-established Department practices. We further seek to promote consistency in terminology, as accrediting agency use of these terms varies.

Changes: None.

Comments: One commenter recommended we revise the proposed definition of “teach-out” to limit access to a closed school discharge, as provided in § 685.214, to eligible borrowers who are not afforded the opportunity or are unable to avail themselves of teach-out options to complete their programs. The commenter argued that it is important for the Department to clarify that the best policy course when closing an institution is for the institution’s leadership to take all appropriate steps to provide a student with a soft landing and clear path to completion. In the commenter’s opinion, permitting borrowers who attended an institution that offered a proper teach-out to seek a closed school discharge disincentivizes institutions from offering teach-outs.

Discussion: We agree with the commenter that it is in the best interest of students for a closing institution to provide a well-designed teach-out structured to offer a clear path to

program completion. However, while those borrowers who accept a teach-out are not then eligible for a closed school discharge under the provisions of § 685.214, the mere availability of a teach-out, however robust, is not a disqualifying factor for such a discharge. Although the Department is firmly committed to the concept of teach-outs as the best option for students affected by an impending school closure to complete their programs of study, we believe it is appropriate that the choice to accept a teach-out in lieu of a closed school discharge rest with each student and that our regulations make clear the availability of that choice. However, we also agree that when an institution commits the time and expense required to conduct an orderly teach-out, a student who chooses to participate in that teach-out is not also eligible for a closed school loan discharge unless the institution fails to provide a teach-out that is materially consistent with what is described in the teach-out plan.

Changes: None.

Comments: One commenter asserted that the Department has failed to explain the reasoning associated with proposed revisions to the definition of “teach-out plan” and “teach-out agreement.”

Citing as an example in the current § 668.14(b)(31), requiring an institution to submit a “teach-out plan” to an accrediting agency in compliance with § 602.24(c) upon the occurrence of certain events, the commenter further contended that the Department has failed to explain how the modified definition of “teach-out plan” will impact other regulations that presently use that term. Finally, the commenter questioned whether the Department has considered the ramifications of amending the definition of “teach-out plan,” including whether it will have a positive, negative, or neutral impact on students and suggests that, taken together, this has deprived the public of a meaningful opportunity to comment on the Department’s proposals.

Discussion: We disagree that the Department has failed to explain its proposal to revise the definitions of “teach-out plan” and “teach-out agreements.” In the preamble to the June 12, 2019 NPRM (page 27411) the Department explained its proposal to revise the definition of “teach-out plan” to clearly distinguish a teach-out plan from a teach-out agreement and to clarify that teach-outs can be conducted by the closing institution as well as another continuing institution. A teach-out agreement is a written contract between two or more institutions; a teach-out plan is developed by an

institution and may or may not include agreements with other institutions. The Department also believes that the definition of “teach-out plan” should include plans for teaching-out students during orderly closures in which an institution plans to cease operating but has not yet closed.

We are uncertain of the commenter’s point in suggesting that the Department has failed to explain how the modified definition of “teach-out plan” will impact other regulations that presently use that term. In the example cited by the commenter, per § 668.14(b)(31), where an institution must submit a “teach-out plan” to an accrediting agency in compliance with § 602.24(c) upon the occurrence of certain events, the teach-out plan submitted by the institution must, upon the effective date of these final regulations, meet the revised definition of “teach-out plan.” The same logic applies throughout the regulations wherever we reference the term “teach-out plan.” With regard to whether the Department considered the ramifications of amending the definition of “teach-out plan,” we carefully considered the potential ramifications, including the impact on students, and this was in the forefront both in the development stage of the proposed regulations and during negotiated rulemaking. We believe that students are best served when their institution engages in an orderly closure that permits students who are close to completing their programs an opportunity to do so. Students who are close to completing their programs may find it particularly challenging to transfer all of their credits to another institution because receiving institutions may require that a student completes a minimum number of credits at the institution awarding the credential. We also believe an orderly teach-out provides more opportunities for students to complete the term in which the teach-out announcement is made and receive assistance from the institution, the State, or the Department to find a new institution to attend.

Finally, we disagree with the commenter’s conclusion that we failed to justify proposed revisions to the definitions in § 600.2 and, accordingly, deprived the public of a meaningful opportunity to comment on the Department’s proposals. We have provided our rationale in the NPRM for all changes the Department proposed to part 600 of the current regulations.

Changes: None.

Comments: One commenter stated that the Department has failed to explain why it proposes to move the definitions of “teach-out agreement”

and “preaccreditation” from the accreditation regulations in part 602 to § 600.2 rather than inserting a cross-reference to those definitions in parts 600 and 668. The commenter further noted that the Department failed to propose changes to the current cross-references to those definitions in part 602.

Discussion: The Department explained its proposal to move the definitions of “teach-out agreement” and “preaccreditation” to § 600.2 in the June 12, 2019 NPRM (page 27411) where we stated, “The Department proposes to move the definitions of “teach-out agreement” and “preaccreditation” from the accreditation regulations in § 602.3 to the institutional eligibility regulations in § 600.2 for consistency, and because the use of those terms extends to regulations in §§ 600 and 668.”

With respect to the commenter’s assertion that the Department failed to propose changes to the current cross-references in part 602, we note that the amendatory text in § 602.3 states, “The following definitions are contained in the regulations for Institutional Eligibility under the Higher Education Act of 1965, as amended, 34 CFR part 600.” “Teach-out agreement” and “preaccreditation” are included among the definitions listed in this section.

Changes: None.

Comments: Several commenters stated that the definition of “religious mission” is overly broad and would prohibit accrediting agencies from enforcing any provisions, including well-established standards and nondiscrimination protections, against religious institutions. Commenters indicated that the definition, in combination with other provisions in the regulations, would allow an institution to overcome barriers to accreditation by including a reference to religion in its mission statement. One commenter indicated that religious missions are no more important than secular missions and that we should not elevated them to a higher status under the law. Another commenter indicated that this definition will undermine the separation of religion and government. Several commenters speculated that these regulations will encourage secular institutions to adopt religious missions and for religious institutions to expand the religious components of their missions to avoid scrutiny by accrediting agencies. Commenters also indicated that institutions will be allowed to adopt discriminatory practices and policies, especially towards LGBTQ students and women, which are justified by the institution’s

religious mission, even if their accrediting agencies have standards barring such practices. Commenters noted that the Department failed to provide evidence of an institution denied accreditation because of its adherence to its religious mission, and that there is therefore no legitimate reason to include the proposed definition.

Discussion: In light of the United States Supreme Court decision in *Trinity Lutheran Church of Columbia, Inc. v. Comer*, and the United States Attorney General’s October 7, 2017 Memorandum on Federal Law Protections for Religious Liberty pursuant to Executive Order 13798, the Department believes that it should provide protection for faith-based institutions in situations in which their ability to participate in Federal student aid programs may be curtailed due to their religious mission or policies, practices, and curricular decisions that enact or are consistent with the tenets of the faith. Allowing accrediting agencies to make negative decisions because of the institution’s exercise of religion could violate the Free Exercise Clause of the United States Constitution. In addition, under the Religious Freedom Restoration Act of 1993 (RFRA) the government may only substantially burden a person’s exercise of religion if the application of that burden to the person is the least restrictive means of furthering a compelling governmental interest. If access to Federal student aid depends upon accreditation decisions that do not respect the religious mission of an institution, the religious institution’s exercise of religion could be substantially burdened, and removing Federal aid may not be the least restrictive means of furthering a compelling governmental interest. Thus, both the Constitution and RFRA protect religious activities in ways that they do not protect other institutional missions. Based on recent Supreme Court decisions, the Department believes that protections such as the ones in these regulations are advisable given the Free Exercise Clause and RFRA and that the Establishment Clause of the Constitution does not prohibit them. Institutions will continue to be subject to anti-discrimination laws, unless they are otherwise exempt. While we do not believe that institutions will change their missions to evade oversight by accrediting agencies, we believe that it would raise constitutional concerns if the Federal government were to decide whether a religious mission is legitimate or whether the reason that an institution

decides to exercise its religious rights is appropriate.

Changes: None.

State Authorization Reciprocity Agreement (§ 600.2)

Comments: Commenters generally supported the Department's proposal to maintain the definition of a "State authorization reciprocity agreement" as promulgated in the Program Integrity and Improvement regulations published in the **Federal Register** on December 19, 2016 (81 FR 92232). However, commenters had differing views regarding the part of the definition that requires reciprocity agreements to permit a member State to enforce its own statutes and regulations, whether general or specifically directed at all or a subgroup of educational institutions. Some commenters felt that this language supports the States' consumer protection role in the triad and enables States to provide the same protections to online students in their States as they provide to students attending brick-and-mortar institutions. Commenters noted that allowing for reciprocity agreements that do not protect the State's authority would undermine the regulatory triad and create a race to the bottom in consumer protections and that the Department should stress that online institutions are subject to a State's consumer protection laws. Other commenters were concerned that the language undermines reciprocity agreements by allowing a State to enforce additional requirements regardless of an agreed-upon set of requirements established in a reciprocity agreement and that we should not allow States to override a reciprocity agreement's regulations. Some of these commenters recommended that the regulations provide that a State authorization reciprocity agreement may require a State to meet requirements and terms of that agreement so that the State could participate in that agreement. A couple of commenters stated that if the concern about a State authorization reciprocity agreement is that it could be interpreted to supplant all of a State's laws, then the most direct way to prevent this from happening would be to revise the definition of "State authorization reciprocity agreement" to provide that the agreement cannot prohibit any member State of the agreement from enforcing its own general-purpose State laws and regulations outside of the State authorization of distance education. Commenters suggested that their proposed definition of "State authorization reciprocity agreement" referencing "general-purpose State laws

and regulations" should replace the language in the current definition that maintains a member State's authority to enforce its own statutes and regulations, whether general or specifically directed at all or a subgroup of educational institutions, while still maintaining a State's authority to enforce its other, non-State authorization related, statutes and regulations. The commenters stated that failure to streamline the definition in this way would continue to cause confusion about the definition, and since the Department has recognized State authorization reciprocity agreements as a method by which State authorization distance education requirements can be met, adjusting the definition in their proposed way is a needed clarification. In addition, the commenters said that, with respect to the concern that the scope of a State reciprocity agreement could be interpreted to extend beyond the scope of State authorization of distance education and impact a State's exercise of its other general oversight activities, by clarifying that States could continue to enforce their general purpose laws—those that do not relate to the State authorization of distance education programs—in addition to the reciprocity agreement, those concerns should be alleviated.

One commenter stated that there needs to be an appropriate due process in place when a State authorization reciprocity organization acts against an institution and this should be a factor that the Department considers regarding the acceptance of reciprocity agreements.

Discussion: The Department appreciates the comments in support of the proposal to maintain the definition of "State authorization reciprocity agreement." However, we are persuaded by the commenters who suggested that we modify the definition to clarify that such an agreement cannot prohibit any member State of the agreement from enforcing its own general-purpose State laws and regulations outside of the State authorization of distance education. A reciprocity agreement may supersede a State's own requirements related to State authorization of distance education and may prohibit a State voluntarily participating in that agreement from adding additional requirements on institutions that also participate in the agreement. It would not be acceptable, for example, for a State to participate in a reciprocity agreement in order to advantage its own public institutions and yet apply additional or alternate requirements related to State authorization of distance education to institutions that participate

in the reciprocity agreement but may be located in a different State. Adopting this suggestion will alleviate confusion about the definition, clarify that the scope of a State authorization reciprocity agreement cannot be interpreted to extend beyond the scope of State authorization of distance education or to impact a State's exercise of its other general oversight activities, and permit a member State of the agreement to enforce its own general-purpose State laws and regulations outside of the State authorization of distance education, while replacing the confusing and potentially conflicting language in the current definition that maintains a member State's authority to enforce its own statutes and regulations, whether general or specifically directed at all or a subgroup of educational institutions.

We decline the recommendation regarding due process when a State authorization reciprocity organization acts against an institution, as we believe that this is a function of the reciprocity agreement, and thus, the members of the reciprocity agreement should address it.

In addition, we note that the definition of "State authorization reciprocity agreement" was unintentionally omitted from the NPRM. At the time, this definition had not been added to the U.S. Code of Federal Regulations due to the delayed implementation of the Department's 2016 State Authorization regulations. However, the 2016 definition of a State reciprocity agreement was published in the **Federal Register** on July 29, 2019 (84 FR 36471) and was discussed during the negotiated rulemaking that led to this final regulation. The comments we received on this definition indicate that the public was aware of the proposed definition based on the consensus language made available to the public on the Department's website.

In the proposed regulations, as part of the amendments to the State authorization regulations under § 600.9(c), we removed the concept of a student's "residence" and replaced it with "location" (see discussion under State authorization in the preamble to the NPRM and under § 600.9(c) below). To ensure consistency between these amendments to § 600.9(c) and the definition of "State authorization reciprocity agreement," which also refers to students "residing" in other States, we are making a conforming change to the "State authorization reciprocity agreement" definition and replacing the word "residing" with "located."

Changes: We revised the definition of "State authorization reciprocity

agreement” in § 600.2 to define a State authorization reciprocity agreement to be an agreement between two or more States that authorizes an institution located and legally authorized in a State covered by the agreement to provide postsecondary education through distance education or correspondence courses to students located in other States covered by the agreement. We further revised this definition to provide that it does not prohibit any member State of the agreement from enforcing its own general-purpose State laws and regulations outside of the State authorization of distance education. Finally, we have replaced the word “residing” with the word “located.”

Institution of Higher Education, Proprietary Institution of Higher Education, and Postsecondary Vocational Institution (§§ 600.4, 600.5, and 600.6)

Comments: One commenter supported the Department’s proposed clarification of initial arbitration requirements but stipulated that, in the interest of transparency, arbitration proceedings should be public.

Discussion: We appreciate the support of the commenter. However, we do not agree that the Department should require that arbitration take place in public and such a requirement is not contained in HEA section 496(e), 20 U.S.C. 1099b(e), the statutory section to which this regulatory provision is closely tied. As we explained in the NPRM, although arbitration hearings are less transparent than court proceedings, the Department believes that existing and proposed requirements for notice to students and the public in §§ 602.26 and 668.43 will ensure both are timely made aware of accreditation disputes and their resolutions.

Changes: None.

Comments: Two commenters expressed opposition to proposed changes regarding initial arbitration. One of those commenters asserted that by relying on arbitration, the Department potentially “extends the clock” for a problem institution, because that arbitration may be followed by a likely costly lawsuit, and suggested that the Department has failed to show evidence either that institutions have routinely not followed the statutory requirement of initial arbitration prior to initiating any other legal action, or that initial arbitration, when used, has resulted in fewer lawsuits. The commenter expressed the opinion that it is incumbent upon the Department to present evidence based on data acquired from agencies on the frequency of arbitration in the event of adverse

actions, the percentage of lawsuits that have occurred without first going through arbitration, the percentage of lawsuits that have occurred after arbitration, and the relative costs of both arbitration and lawsuits to agencies. Additionally, the commenter requested that the Department explain how the final rule will ensure that institutions and agencies are meeting the requirements under this section. Finally, the commenter asked that the Department protect students by placing restrictions on enrollment or receipt of Federal financial aid in the event of arbitration proceedings, since the accrediting agency has already ruled the institution should not be accredited at all.

Another commenter asserted that current initial arbitration requirements do not adequately account for issues and concerns raised by the United Negro College Fund (UNCF) about the fairness of the accreditation review process in a May 9, 2019 white paper (*Biases in Quality Assurance: A Position Paper on Historically Black Colleges and Universities and SACSCOC*).⁵ Specifically, they noted the lack of black peer reviewers, the lack of transparent or unambiguous financial standards, a faulty peer reviewer selection process, and problems with inter-reviewer reliability and bias among peer reviewers. Arguing that proposed changes to §§ 600.4, 600.5, and 600.6 would exclude the litigation option as the only means of redress available to Historically Black Colleges and Universities (HBCUs) in the face of the bias inherent in the accreditation review process, the commenter asked that these changes not be made until such time as the issues identified in the UNCF white paper can be addressed.

Discussion: HEA section 496(e) provides that the Secretary may not recognize the accreditation of any institution of higher education unless it agrees to submit any dispute involving the final denial, withdrawal, or termination of accreditation to initial arbitration prior to any other legal action. As a result, the proposed changes need not be substantiated with data from accreditation agencies indicating the exact number of initial arbitration proceedings or the number of adverse actions that resulted in litigation without recourse to initial arbitration. We made these changes to align with statutory requirements. Current regulations in §§ 600.4(c), 600.5(d), and 600.6(d), consistent with

the HEA, already require institutions to submit to initial arbitration before initiating any other legal action. The proposed regulations establish no additional requirements with respect to initial arbitration. As we explained in the NPRM, the statutory requirement has not changed; however, the Department’s regulations heretofore have neglected to fully implement the statutory requirement, which we are correcting with these final regulations. Through the final regulations, the Department seeks to highlight the initial arbitration requirement to raise awareness of it and to clarify the current regulations.

Concerning the question of what additional measures the Department might take to ensure that institutions and agencies comply with the requirements of this section, the Department does not intend to establish a new compliance or enforcement protocol. As previously noted, the statute and current regulations already require institutions to enter initial arbitration with their accrediting agencies before taking additional legal action. We expect institutions and agencies to comply with those requirements. Certainly, when we know an institution or accrediting agency ignored or refused to comply with applicable statutory and regulatory guidelines relevant to initial arbitration, the Department will act under its current authority. We do not believe that restricting student enrollment at an institution involved in initial arbitration or limiting an institution’s access to title IV, HEA funds is either appropriate or beneficial to students. Such measures would constitute an adverse action against the institution before it has had the benefit of due process with respect to the potential revocation of its accreditation.

In response to the commenter who expressed concerns over the fairness of the accreditation review process as it has been applied to HBCUs, the Department does not, in any way, dismiss the issues raised in the UNCF white paper on this matter cited by the commenter. We believe that where bias is shown to have been a factor in any aspect of the accreditation process, including initial arbitration, it should be brought to the Department’s attention. Moreover, the use of arbitration could prove to be a lower-cost and quicker way for an institution that believes it was treated unfairly by its accrediting agency to seek and achieve resolution. However, the breadth of what the UNCF white paper addressed far exceeds the largely procedural issue of initial arbitration discussed among negotiators

⁵ [uncf.org/wp-content/uploads/Biases-in-Quality-Assurance_UNCF-Accreditation-White-Paper-Updated.pdf](https://www.uncf.org/wp-content/uploads/Biases-in-Quality-Assurance_UNCF-Accreditation-White-Paper-Updated.pdf).

and clarified in these regulations. Finally, it is not the case, as suggested by the commenter, that the regulations would restrict or foreclose any of the legal options available to institutions in opposing adverse actions taken by an accrediting agency.

Changes: None.

Comments: Regarding the proposed changes to the definition of a “program leading to a baccalaureate degree in liberal arts” in § 600.5(e), one commenter expressed concern that the definition would allow the Department to bypass accrediting agencies, making it possible for institutions to designate as “liberal arts programs” those composed partially of courses that are not taught by faculty. Specifically, the commenter cited a Bachelor of General Studies program offered at a public four-year university, the requirements of which permit students to earn credits by passing College Level Examination (CLEP) or similar exams in lieu of attending classes taught by faculty. Another commenter contended that the Department has not offered adequate explanation or justification for the proposed changes, in violation of the Administrative Procedure Act (APA). The commenter elaborated that the Department proposes to substitute its own judgment, as well as remove a descriptive list of the categories of “general instructional program[s]” that typically qualify, including programs in the “liberal arts subjects, the humanities disciplines, or the general curriculum.”

Discussion: One commenter may have misinterpreted the context and applicability of § 600.5(e). The commenter opposed the proposed changes to the definition of a “program leading to a baccalaureate degree in liberal arts,” based on concerns that the revised definition will facilitate the introduction of liberal arts programs at the baccalaureate level that permit alternative means of earning credits (including successful completion of a test). This definition applies only to the extent that a liberal arts program offered by a proprietary institution of higher education may potentially be an exception to the general requirement that all programs offered by this type of institution lead to gainful employment in a recognized occupation. The change does not expand the ability of proprietary institutions to offer liberal arts programs; rather, it more clearly defines the breadth of programs that a proprietary institution could not offer without first qualifying for the statutory exception. A program leading to a degree at a public or private not for profit institution, such as the one cited by the commenter, would not be subject

to the definition of a “program leading to a baccalaureate degree” in current or proposed § 600.5(e). The applicability of § 600.5(e) notwithstanding, whether a student may earn credits through testing, life experience, or some other alternative means, or how many, is not subject to regulation by the Department.

We disagree with the commenter who believed the Department has violated the APA by failing to provide an adequate justification for proposing changes to § 600.5(e). As explained in the NPRM, in § 600.5(e), we propose to clarify the definition of “program leading to a baccalaureate degree in liberal arts” to establish the Department’s responsibility for determining what types of programs qualify, and to tighten up the regulatory definition of the term, while maintaining and respecting the grandfathering requirements in the statute. The proposed changes meet this stated objective.

We further disagree with the commenter that in establishing its responsibility for determining what types of programs qualify, the Department is substituting its judgment for what is in the current regulations. The proposed regulations merely eliminate in this section the redundant requirement that an institution’s accrediting agency determine a liberal arts program to fall within the generally accepted instructional categories. Contrary to the assertions of the commenter, we retained this requirement in proposed §§ 600.5(e)(1) through (4).

Changes: None.

State Authorization (§ 600.9)

State Authorization—Religious Institution (§ 600.9(b))

Comments: Some commenters agreed with the proposed changes to the definition of “religious institution” used for purposes of § 600.9(b). Others opined that the Department did not provide sufficient justification for removing the current definition. Commenters expressed concern that removing the Federal definition of “religious institution” would create an inconsistent standard and would leave each State to define the term independently, thus allowing institutions with very little religious connection to qualify for favored treatment under one State’s definition while institutions in other States could be held to a stricter definition under which they might not qualify as a “religious institution.” In another vein, commenters expressed concern that classification as a religious institution in

a State could allow the institution to evade consumer protection requirements. Other commenters believed that the Department should not eliminate the current regulations because they are limited enough in scope to safeguard the separation of church and State (First Amendment Establishment Clause), as well as prevent abuse of exemptions while protecting students.

Discussion: The Department appreciates all comments in support of the proposed regulations. We disagree, however, that we should maintain the current definition. With respect to concerns expressed by commenters who contended we should keep the current definition, the current Federal definition of a religious institution for State authorization purposes may conflict with a State’s definition for the same, which is troubling because State authorization is the mechanism by which States oversee institutions and perform their role within the triad. This disconnect has further required such institutions to seek an alternative way to meet State authorization requirements. The Department believes that, if the institution is physically located in or operating in a given State, the State has the authority to determine, for the purpose of State authorization, how that institution will be authorized by the State. Furthermore, to meet State authorization requirements and be legally authorized by a State, a religious institution is subject to the requirements under 34 CFR 600.9(a)(1) that require the State to have a process to review and appropriately act on complaints concerning the institution, which would provide consumer protection. As States define “religious institution” in varied ways, we believe that the most effective approach to ensure our State authorization regulations are aligned with the First Amendment is to require States to meet the requirements based on their existing definitions, rather than create a new one. We believe that, for the purpose of State authorization, States have the right to make their own decisions regarding whether an institution is a religious institution or not. States continue to have an incentive to protect their students, and students will have access to a State complaint process.

Changes: None.

State Authorization (§ 600.9(c))

Student Location and Determinations of a Student’s Location

Comments: Most commenters generally supported the proposed change that specifies that institutions

should determine which State's authorization laws are applicable to an institution based on a student's location and not a student's residence. Commenters noted that using a student's location rather than residency was more appropriate because this framework matches the approach that States take. While residency requirements vary by State, a State's authorization jurisdiction is based upon the location of the educational activity. Commenters also felt that this change would allow students who have not established a legal or permanent residency in a State to benefit from State requirements for an institution to offer distance education in that State. Some commenters noted, however, that there is a risk that, because institutions already have to do more than the proposed regulations would require to meet State or National Council for State Authorization Reciprocity Agreements (NC-SARA) reporting requirements, an institution would solely follow the Federal standard, believing this standard supersedes State requirements, and could thus be found to be out of compliance in a State or with NC-SARA. On the other hand, other commenters felt that their existing process and procedures allow them to comply with State and NC-SARA reporting requirements.

Commenters generally supported the proposal to require institutions to have policies or procedures to make determinations about the States in which its students are located. Many commenters also agreed with having policies and procedures that set how the institution will determine a student's location at the time of initial enrollment, as well as for updating its records if a student's location changes, in order to ensure that the correct State authorization is obtained. Commenters believed the proposed requirements would reduce confusion about where the student is located for State authorization distance education purposes. Many commenters noted their appreciation that the proposed regulations allow institutions to develop the process for determining location that is best suited to their organization and the student population they serve. One commenter was concerned that the Department's proposal would grant institutions the authority to determine a student's location based on undefined policies or procedures, and that since there is no mechanism for students or States to learn how institutions determine which State laws apply, this could result in institutions minimizing their regulatory burdens. The

commenter believed that the States alone should determine which State laws apply, rather than rely on institutions to do so. Another commenter believed that, instead of leaving it up to an institution's discretion, there should be a definition for the concept of "location" but did not propose what the definition should be. Yet another commenter felt the Department should require an institution to determine a location for all enrolled students not less than annually and that the institution update its determination of a student's location when the institution should reasonably know about the change.

Many commenters believed that the proposed regulations simplify the institutional processes needed to establish and document a student's location at the time of initial enrollment and later through a formal notification process for student change of address. Some commenters sought clarification on how to determine "time of enrollment" for determining a student's location because there could be a time lag between when a student enrolls at a location and where the student is located once the course begins. Other commenters also asked for clarification on what constitutes a "formal receipt of information." One commenter asked for clarification about whether the Department would expect that institutions use a uniform location-reporting procedure in all instances across all individual units within a single institution.

Discussion: The Department appreciates the comments in support of the proposed regulations. Regarding the concern that, because institutions already have to do more than the proposed regulations would require to meet State or NC-SARA reporting requirements, an institution would solely follow the Federal standard, believing this standard supersedes State requirements, and could thus be found to be out of compliance in a State or with NC-SARA, these final regulations do not absolve institutions from complying with State laws nor do they require participation in reciprocity agreements or override the requirements of such agreements. Furthermore, we disagree with the comment that the States should determine which State laws apply rather than institutions. It is an institution's responsibility to determine in which State a student is located at the time of initial enrollment, and based on this information, the institution determines which State's authorization requirements apply.

We also disagree that an institution determines a student's location

completely at its discretion. The institution determines the student's location at the time of initial enrollment based on the information provided by the student, and upon receipt of information from the student that their location has changed, in accordance with the institution's procedures. Institutions may, however, develop procedures for determining student location that are best suited to their organization and the student population they serve. For instance, institutions may make different determinations for different groups of students, such as undergraduate versus graduate students. We also do not believe it is necessary to determine location for all enrolled students annually, but rather believe that determination at the time of a student's initial enrollment and upon a formal notification by the student of his or her change of address to another State, in accordance with the institution's procedures, is sufficient to ensure that students will receive information they need while not being overly burdensome or costly to institutions. As discussed in the preamble to the NPRM, we believe that we should avoid subjecting an institution to unrealistic and burdensome expectations of investigating and acting upon any information about a student's whereabouts that might come into its possession. It is in the interest of both institutions and students to have understandable, explicit policies that pertain to the maintenance of student location determinations.

With respect to determining "time of enrollment" for determining a student's location, we specify in the NPRM that the location is determined at the time of a student's initial enrollment in a program (as opposed to the time of a student's initial application to the institution). We did not attach any further conditions to this determination. We also provided that, with respect to a "formal receipt of information" regarding change of location, this information would come from the student to the institution in accordance with the institution's procedures for changing their location to another State. The institution would need to establish or maintain and document the change of address process. Finally, as we discuss in the preamble to the NPRM, we expect institutions to consistently apply their policies and procedures regarding student location to all students, including students enrolled in "brick-and-mortar" programs.

Changes: None.

State Requirements

Comments: Many commenters supported the requirement that distance education programs should be required to meet any State authorization requirements in States where they do not maintain a physical presence but enroll students. Some commenters asked that the Department define what an institution must do to meet the requirement in § 600.9(c)(1)(i) that an institution must meet any of that State's requirements for it to be legally offering postsecondary distance education or correspondence courses in that State, as well as what documentation is required. A couple of commenters were concerned about the impact on the reciprocity agreement of the proposed requirement in § 600.9(c)(1)(ii), under which an institution would be "subject to any limitations in that agreement and to any additional requirements of the State" because, if States are able to require institutions to meet State requirements outside of the reciprocity agreement, these requirements could contradict or go beyond the scope of existing NC-SARA provisions and institutions would have to engage in research and fulfill any additional requirements, which would undermine a key purpose of the reciprocity agreement. One commenter felt that the Department should recognize a State's prerogative to establish exemptions from formal approval and to consider exempt institutions as authorized to offer distance education.

Discussion: The Department appreciates the comments in support of the proposed regulations. Institutions are required to know what State requirements exist for an educational program to be offered to a student in a particular State, and the required approvals that constitute what is needed for the program to be authorized by that State. Documentation should reflect that the institution has met these applicable State requirements, which could include evidence that a State waives direct authorization of the particular institution or institutions of its type. These requirements would not have any bearing on reciprocity agreements. As we stated in the preamble of the December 19, 2016, final regulations (81 FR 92232), each State in which an institution is offering distance education remains the ultimate authority for determining whether an institution is operating lawfully in that State, regardless of whether a non-State entity administers the agreement, including whether an institution in a reciprocity agreement is operating in that State outside the limitations of that

agreement. The regulations further provide that an institution offering distance education in a State in which the institution is not physically located or in which the institution is otherwise subject to a State's jurisdiction, as determined by the State, must meet any of that State's requirements to be legally offering distance education in that State. However, even if the State does not have any specific approval requirements for an institution to be offering distance education in that State, § 600.9(a)(1) requires that, for an institution that has physical presence in a State, that State must offer a process to review and appropriately act on complaints concerning the institution, including enforcing applicable State laws, for the institution to meet the State authorization requirements. We agree with commenters that it is important to revise § 600.9(c)(1)(ii) for consistency with the revised definition of the term "State authorization reciprocity agreement," in which we provide that a reciprocity agreement does not prohibit any member State of the agreement from enforcing its own general-purpose State laws and regulations outside of the State authorization of distance education. Accordingly, we have revised the provision to provide that, in the case of an institution covered by a reciprocity agreement, the institution is considered to meet State requirements for it to be legally offering postsecondary distance education or correspondence courses in the State, subject to any limitations in that agreement and to any additional requirements of the State not relating to authorization of distance education.

Changes: We have revised § 600.9(c)(1)(ii) to provide that, for an institution covered by a reciprocity agreement, the institution is considered to meet State requirements for it to be legally offering postsecondary distance education or correspondence courses in the State, subject to any limitations in that agreement and to any additional requirements of the State not relating to authorization of distance education.

State Complaint Process

Comments: Some commenters supported eliminating the State complaint process requirement to protect the eligibility of students who are located in States that do not offer a complaint process to receive title IV, HEA assistance to attend distance education programs, agreeing that § 600.9(a)(1) already addresses the State complaint process and that the State complaint process requirement under § 600.9(c)(2) is duplicative of the requirements under § 668.43(b). Other commenters believed that the State

complaint process requirement is not redundant because, even though the Department states that eliminating the requirement would allow students to receive Federal student aid even if the State they are located in does not have a State complaint process, this change would conflict with the definition of "State authorization" under § 600.9(a)(1), which provides that State authorization requirements include that the State have "a process to review and appropriately act on complaints concerning the institution, including enforcing applicable State laws." Since the only entity that can enforce a specific State's laws is that State, institutions would not be able to comply with the State authorization requirements if there is not a complaint process available to students in their own States. The commenter argued that the final regulations should reflect a State's authority to accept, investigate, and act on complaints both from students located in that State and from students enrolled at institutions physically located in that State. In a similar vein, another commenter opined that nothing in § 668.43(b) requires that, as a condition of State authorization, an institution only be permitted to operate in a jurisdiction in which there is a complaint process. The commenter also indicated that States should collect complaint records and make these publicly available in a central database. Another commenter recommended that the Department require States in which an institution is located to share a copy of complaints with other States whose residents are enrolled in that institution.

Discussion: The Department appreciates the comments in support of the proposed regulations. With respect to the other comments, nothing in the regulations prevents a State from providing a State complaint process that an institution offering distance education would have to comply with in order to operate in that State, unless the State and institution have joined a reciprocity agreement that provides an alternate means for addressing student complaints. Furthermore, with respect to the disclosures under § 668.43(b), it follows that for an institution to provide a student or a prospective student with contact information for filing complaints with its State approval or licensing entity and any other relevant State official or agency that would appropriately handle a student's complaint, the institution would need to have such information to provide or it would be out of compliance with the regulations. Regarding the suggestion that States collect complaint records

and house them in a publicly available central database and that States in which an institution is located share a copy of complaints with other States whose residents are enrolled in that institution, we decline this suggestion. Such complaints generally fall under the jurisdiction of the States and the accrediting agencies. Additionally, the Federal Trade Commission maintains a database of consumer complaints. While the Department declines to take these recommendations, nothing in these regulations prevents States from taking these actions if they wish to do so.

The Department clarifies that the contact information provided may be for whichever entity or entities the State designates to receive and act upon student complaints. Contact information is not necessarily required for each of the following: A State approval entity, a State licensing entity, and another relevant State official or agency. If the State has only designated one of these types of entities, contact information for that one entity is sufficient.

Changes: We have included an amendatory instruction to remove the text of current § 600.9(c)(2). We also have redesignated proposed § 600.9(c)(1)(ii)(A), (B), and (C) as § 600.9(c)(2)(i), (ii), and (iii).

Special Rules Regarding Institutional Accreditation or Preaccreditation (§ 600.11)

Comments: One commenter expressed concern that the proposed changes to the regulations would permit institutions to more easily switch to a new accrediting agency or maintain a back-up agency, enabling them to skirt enforcement. The commenter opined that this change is inconsistent with the statutory requirement in HEA section 496(h), 20 U.S.C. 1099b(h), that the Secretary not recognize the accreditation of an institution seeking to change accrediting agencies, unless the institution can demonstrate reasonable cause and submits all relevant materials; as well as the statutory requirement in HEA section 496(i), 20 U.S.C. 1099b(i), that the Secretary not recognize the accreditation of an institution that maintains accreditation from more than one agency unless the institution demonstrates reasonable cause and submits all relevant materials, and designates one agency as its accrediting agency for title IV purposes.

Discussion: We disagree with the commenter that the changes to § 600.11 are inconsistent with the statutory requirements of HEA section 496(h) and (i).

HEA section 496(h) provides that “The Secretary shall not recognize the

accreditation of any otherwise eligible institution of higher education if the institution is in the process of changing its accrediting agency or association, unless the eligible institution submits to the Secretary all materials relating to the prior accreditation, including material demonstrating reasonable cause for changing the accrediting agency or association.” The new regulations in § 600.11(a) continue to require an eligible institution to submit to the Secretary all materials related to its prior accreditation or preaccreditation. Moreover, the new regulations require additional documentation, including substantiation of reasonable cause for the change.

The “dual accreditation rule” provision in HEA section 496(i) states that “The Secretary shall not recognize the accreditation of any otherwise eligible institution of higher education if the institution of higher education is accredited, as an institution, by more than one accrediting agency or association, unless the institution submits to each such agency and association and to the Secretary the reasons for accreditation by more than one such agency or association and demonstrates to the Secretary reasonable cause for its accreditation by more than one agency or association. If the institution is accredited, as an institution, by more than one accrediting agency or association, the institution shall designate which agency’s accreditation shall be utilized in determining the institution’s eligibility for programs under this chapter.” The new regulations in § 600.11(b) continue to require the eligible institution to submit to the Secretary all materials related to its prior accreditation or preaccreditation, and clarify the conditions under which the Secretary would not determine the institution’s cause for multiple accreditation to be reasonable, including when the institution has had its accreditation withdrawn, revoked, or otherwise terminated in the prior two-year period and when the institution has been subject to a probation or equivalent, show cause order, or suspension. The new regulation does provide that the Secretary may consider an institution’s interest in obtaining multiple accreditation to be reasonable if it is based on geographic area, program-area focus, or mission, but the institution must provide evidence to explain or substantiate its request.

Changes: None.

Comments: Two commenters objected to the provisions in this section, arguing that they create a loophole in violation of the HEA and are contrary to law and

in excess of the Department’s statutory jurisdiction within the meaning of section 706 of the APA. The commenters note that under HEA section 496(j), an institution “may not be certified or recertified” for purposes of title IV if the institution has had its “accreditation withdrawn, revoked, or otherwise terminated for cause,” unless such action has been “rescinded by the same accrediting agency.” One commenter opined that the Department failed to provide sufficient evidence to support this change. One commenter suggested that, in the event an institution seeks multiple accreditations and has been subject to any kind of action, the Department should require that a problem raised by one agency should trigger automatic review by the other agency with a higher evidentiary bar to show why a similar sanction should not be applied.

Discussion: We disagree with commenters that § 600.11 creates a loophole that would violate the HEA and is contrary to law and in excess of the Department’s statutory jurisdiction within the meaning of section 706 of the APA. As discussed above, the new provisions are consistent with HEA section 496(h) and (i). HEA section 496(j) addresses the impact on an institution from the loss of accreditation. Again, as described above, we continue to hold institutions to the limitations imposed when accreditation has been withdrawn, revoked, or otherwise terminated for cause during the preceding 24 months pursuant to § 600.11(a)(1)(ii)(B).

We further disagree with the commenter who asserted that the Department has failed to provide enough evidence to support this change. As explained in the NPRM (84 FR 27414), the proposed regulation seeks to maintain guardrails to ensure that struggling institutions cannot avoid the consequences of failing to meet their current accrediting agency’s standards by attaining accreditation from another agency, while maintaining recourse for institutions that have been treated unfairly or have legitimate reasons for seeking multiple accreditation unrelated to findings or allegations of noncompliance with the quality standards of its current accrediting agency. The potential for an institution to face loss of its accreditation without being afforded its due process rights as defined in § 602.25, or as the result of an agency’s failure to respect the institution’s stated mission, supports the need for this change.

Regarding the suggestion from a commenter that, where an institution seeking multiple accreditations has been

subject to any kind of action, the Department should require the problem raised by one to trigger an automatic review by the other agency to show why a similar sanction should not be applied, we believe such a requirement would be superfluous. The applicable amendatory language as proposed already stipulates that the Secretary will not determine the cause for seeking accreditation from a different or second accrediting agency to be reasonable if the institution has had its accreditation withdrawn, revoked, or otherwise terminated for cause during the preceding 24 months or has been subject to a probation or equivalent, show cause order, or suspension order during the preceding 24 months. Any action initiated by the institution's current agency would necessarily be reviewed by the Department and, unless found to be related lack of due process, inconsistently applied standards or criteria, or failure to respect the institution's stated mission not considered reasonable cause to seek additional accreditation. At that point, we would not recognize the additional accreditation.

We also disagree with the commenters who stated that the Department failed to provide data or evidence to support the need for the proposed regulatory changes during the negotiated rulemaking. As we stated previously in this preamble, the changes to the regulations are based on many factors, including feedback we received from the public, studies conducted by higher education associations, and emerging trends in postsecondary education. For example, concerns have been raised about the lack of innovation in accreditation, the challenges that new agencies have in gaining recognition, and the difficulties that new institutions have in becoming accredited and gaining access to title IV funds.⁶ One challenge new accrediting agencies face in gaining recognition is the need to serve as a Federal gatekeeper for at least one institution or program. Accredited institutions or programs are unlikely to leave a well-established accrediting agency, thereby risking their access to title IV funds, even if a new agency may be more appropriate to the mission of the institution, support educational innovation at lower cost, have higher standards for academic excellence, or enable an institution to meet the needs of its students. This regulatory change to permit dual accreditation will allow institutions to have greater choice in

selecting an accrediting agency that best aligns with the institution's mission, demonstrates educational excellence to potential students, peer institutions, or employers, and supports innovative pedagogical approaches. In addition, in order for new accrediting agencies to have the ability to become recognized, they need to be able to attract respected institutions to their membership, which is unlikely if an institution is required to abandon its current agency first. Finally, as we eliminated geography from an accrediting agency's scope, it is important to permit dual accreditation during the period in which an institution is undergoing review to change its agency.

Furthermore, the Department developed a list of proposed regulatory provisions based on advice and recommendations submitted by individuals and organizations as testimony in a series of three public hearings in September of 2018, as well as written comments submitted directly to the Department. Department staff also identified issues for discussion and negotiation. We developed the proposed regulations that we negotiated during negotiated rulemaking with specific objectives for improvement, including addressing the requirements for accrediting agencies in their oversight of member institutions or programs; establishing requirements for accrediting agencies to honor institutional mission; revising the criteria used by the Secretary to recognize accrediting agencies, emphasizing criteria that focus on educational quality; developing a single definition for purposes of measuring and reporting job placement rates; simplifying the Department's process for recognition and review of accrediting agencies; and promoting greater access for students to high-quality, innovative programs. We believe the changes to the regulations in this section align with these objectives.

We do not think it is appropriate for the Department to require that an action taken by one agency should trigger automatic review by another agency, with a higher evidentiary standard, to show why a similar sanction should not be applied, since our current regulations do not require this and an institution could be compliant with the standards of one agency even if not compliant with the standards of another. Currently, § 602.28 requires an agency to investigate an institution if another accrediting agency subjects it to any adverse action or places it on probation. A higher evidentiary standard is not appropriate.

Changes: None.

Comments: One commenter suggested that a provision be added to this section to permit an accrediting agency to prohibit its recognized institutions from maintaining accreditation by more than one recognized agency.

Discussion: We disagree with the commenter's suggestion to permit an accrediting agency to prohibit its recognized institutions from maintaining accreditation by more than one recognized agency as it could have an anticompetitive impact and prevent innovative changes in higher education delivery. We will serve institutions and students better when accrediting agency standards align with the institution's educational objectives and stated mission. In some cases, this may require an institution to seek accreditation from more than one accrediting agency or to change accrediting agencies.

Changes: None.

Special Rules Regarding Institutional Accreditation or Preaccreditation (§ 600.11)

Multiple Accreditation (§ 600.11(b))

Comments: One commenter opined that the changes to § 600.11(b) provide too much discretion to determine that an accrediting agency acted improperly and allows an institution to seek alternate accreditation when the institution does not meet its original accrediting agency's standards. The commenter agreed that we should permit an institution to select a comprehensive institutional accrediting agency as its title IV gatekeeper and seek mission-based institutional accreditation as well.

Discussion: We disagree with the commenter that the changes to § 600.11(b) provide too much discretion for the Department to determine that an accrediting agency acted improperly or to allow an institution to seek a new accrediting agency when the institution does not meet its original accrediting agency's standards. The institution seeking a change of accrediting agencies or multiple accreditation must demonstrate to the Secretary a good reason for seeking accreditation by a different or additional agency in order for that request to be approved. Moreover, the regulations limit the ability of institutions that have been subject to a probation or equivalent, show cause order, or suspension order or that have had their accreditation withdrawn, revoked, or otherwise terminated for cause during the preceding 24 months, from making such a change.

We thank the commenter for support of the provision that enables an

⁶ <https://www.educationnext.org/college-accreditation-explained-ednext-guide-how-it-works-whos-responsible/>.

institution to select a comprehensive institutional accrediting agency as its title IV gatekeeper and seek accreditation from a mission-based institutional accrediting agency.

Changes: None.

Comments: Two commenters objected to the provisions of § 600.11(b)(2)(i)(B) that enable the Secretary to determine an institution's justification for seeking multiple accreditation or preaccreditation to be reasonable if the institution's primary interest in seeking multiple accreditation is based on its mission. The commenters asserted that this grants exemptions for institutions with a "religious mission" from rules preventing agency-shopping if the institution claims an accrediting agency was not respecting its religious mission.

Discussion: The proposed regulations provide latitude to the Secretary to determine that an institution's interest in seeking multiple accreditation is reasonable if it seeks accreditation by more than one accrediting agency as a result of its mission, geographic area, pedagogical focus, or program area focus. The Secretary will not be required to make such a determination. An institution seeking multiple accreditation would need to convince the Secretary of the reasonableness of its request. If an institution appears to be avoiding compliance with its current accrediting agency's standards by seeking accreditation from a new or additional accrediting agency, the Secretary could determine that the agency's request is not reasonable and deny that request.

Changes: None.

Severability (§ 600.12)

Comments: None.

Discussion: We have added § 600.12 to clarify that if a court holds any part of the regulations for part 600, subpart A, invalid, whether an individual section or language within a section, the remainder would still be in effect. We believe that each of the provisions discussed in this preamble serve one or more important, related, but distinct, purposes. Each provision provides a distinct value to the Department, the public, taxpayers, the Federal government, and institutions separate from, and in addition to, the value provided by the other provisions.

Changes: We have added § 600.12 to clarify that we designed the regulations to operate independently of each other and to convey the Department's intent that the potential invalidity of one provision should not affect the remainder of the provisions.

Change in Ownership Resulting in a Change in Control for Private Nonprofit, Private For-Profit, and Public Institutions (§ 600.31)

Comments: One commenter expressed support for the changes to § 600.31 that clarify the terms of a change of ownership or ownership interest. Another commenter suggested that we clarify that the term "ownership" is meant to include changes in management or control of public institutions.

Discussion: We thank the commenter who supported the changes to this section. Further, we agree with the commenter who suggested that the term "ownership" as defined in § 600.31 requires clarification with respect to public institutions. Accordingly, we clarify that "change in ownership" as applied in this section includes changes in management or control of public institutions. Such a change in management could include instances in which public institutions are merged into a new system or merged with another institution, or instances when boards of trustees are merged to provide joint oversight of more than one institution, among other things. This does not include instances when a new president or chancellor is hired or appointed, or when there is a change in the individual who holds the position of SHEEO.

Changes: None.

Eligibility of Additional Locations (§ 600.32)

Comments: Several commenters objected to the proposed change that would allow an entity acquiring a closing location to be liable only for improperly spent title IV funds and unpaid refunds from the prior and current academic years. Some argued that the Department is attempting to solve the problem of institutions closing without sufficient resources to repay outstanding liabilities by reducing the requirement for these institutions to make students, the Department, and taxpayers whole, rather than fulfilling its enforcement responsibility by requiring institutions to post letters of credit in certain circumstances to protect the Federal fisc. Others asserted that the change could result in students being duped into thinking they are being offered a new educational opportunity, while potentially losing access to closed school loan discharges in the process. The commenters requested that the Department require that purchasers accept all past liabilities for the locations they acquire, except as determined by the Secretary on the

strength of the purchaser's change of ownership application with the Department,⁷ arguing that such action would enable the Department to retain some discretion to prevent inappropriate or high-risk purchases.

Discussion: We disagree that § 600.32 should be amended to require purchasers to accept all past liabilities for the school locations they acquire, except as determined by the Secretary on the strength of the purchaser's application. We believe it is reasonable to require new owners to accept liability for all financial aid credit balances (See § 685.216 regarding unpaid refunds) owed to students who received title IV, HEA program funds and for all improperly expended or unspent title IV, HEA program funds received during the current academic year and up to one academic year prior by the institution that has closed or ceased to provide educational programs. This timeline mirrors the period of time during which the Department typically conducts program reviews, which includes the current year and the prior year. Program reviews focus on the current and prior year because they provide a more accurate picture of the institution's current administrative strength and function. This provision provides the same window to an outside entity to evaluate the extent to which potential liability exists due to the actions of a prior, unrelated owner, or to secure financing. There may be cases when the acquisition of a closing school by a new owner or entity serves the best interest of students, the local community, and taxpayers. Limiting the potential liability for which a new owner or entity is responsible does not relieve the past owner or entity of its liability for funds owed to the Department as a result of past actions, insufficiencies, or borrower defense to repayment claims.

We also disagree that the changes to this section would "dupe" students into thinking they are being offered a new educational opportunity and deprive them of a closed school loan discharge. While it is true that this regulatory change may precipitate fewer school closings and, as a result, fewer closed school loan discharges, students will have the option of completing their program or transferring to a new institution to do so, rather than losing the time and effort they have invested at one institution by starting over, repeating classes, or earning additional credits elsewhere. This regulation does not interfere with a borrower's right or

⁷ Application for Approval to Participate in Federal Student Financial Aid Programs is available at eligcert.ed.gov/ows-doc/eapp.htm.

ability to submit a borrower defense to repayment claim and seek relief from the Department in the event that misrepresentations occurred under prior ownership; however, it does limit the liability that a new owner assumes for actions that the prior owners took or failed to take.

Changes: None.

Severability (§ 600.33)

Comments: None.

Discussion: We have added § 600.33 to clarify that if a court holds any part of the regulations for part 600, subpart C, invalid, whether an individual section or language within a section, the remainder would still be in effect. We believe that each of the provisions discussed in this preamble serve one or more important, related, but distinct, purposes. Each provision provides a distinct value to the Department, the public, taxpayers, the Federal government, and institutions separate from, and in addition to, the value provided by the other provisions.

Changes: We have added § 600.33 to make clear that the regulations are designed to operate independently of each other and to convey the Department's intent that the potential invalidity of one provision should not affect the remainder of the provisions.

Termination and Emergency Action Proceedings (§ 600.41)

Comments: Several commenters favored the changes to § 600.41. These commenters did not provide additional details other than to note their support.

Discussion: We thank the commenters for their support to delete an outdated reference formerly located in § 600.41(a)(1)(ii)(B) that allowed for termination of an institution's eligibility under a show-cause hearing, if the institution's loss of eligibility resulted from the institution's having previously qualified as eligible under the transfer of credit alternative to accreditation. This alternative has not been possible since its repeal in 1992.

We further thank the commenters for their support of updating the terminology in § 600.41(d) that changes the word "certify" to "originate," which is used in the Direct Loan Program, the only program under which the Department currently makes loans.

Changes: None.

Severability (§ 600.42)

Comments: None.

Discussion: We have added § 600.42 to clarify that if a court holds any part of the regulations for part 600, subpart D, invalid, whether an individual section or language within a section, the

remainder would still be in effect. We believe that each of the provisions discussed in this preamble serve one or more important, related, but distinct, purposes. Each provision provides a distinct value to the Department, the public, taxpayers, the Federal government, and institutions separate from, and in addition to, the value provided by the other provisions.

Changes: We have added § 600.42 to make clear that the regulations are designed to operate independently of each other and to convey the Department's intent that the potential invalidity of one provision should not affect the remainder of the provisions.

The Secretary's Recognition of Accrediting Agencies

What definitions apply to this part? (§ 602.3)

Comments: Two commenters opposed the proposed changes in § 602.3(b) that permit accrediting agencies to retain recognition if they meet a newly proposed definition of "substantial compliance," rather than requiring them to be fully compliant with all applicable standards. The commenters asserted that this proposed definition is inconsistent with HEA section 496 and makes it virtually impossible for the Department to hold an agency accountable when it fails to perform.

Discussion: We disagree with the commenters that the proposed definition of "substantial compliance" is inconsistent with the statute and makes it virtually impossible for the Department to hold an agency accountable when it fails to perform. For many years the Department relied on the "substantial compliance" standard in making recognition determinations and, currently, some accrediting agencies already recognize "substantial compliance" in their own standards.⁸ The statute requires the accrediting agency or association to demonstrate the ability and experience necessary to operate as an accrediting agency or association. It does not require that the accrediting agency demonstrate that it has applied each and every one of its standards, as evidenced by the fact that an accrediting agency must accredit or preaccredit only one institution prior to petitioning the Department for recognition. It also does not require the Department to deny recognition to an otherwise well-performing accrediting agency simply because of minor administrative omissions or errors, or because the agency had to make a minor exception

to its regular policies in order to serve the needs of students. We see a significant difference between "substantial compliance," which means that an agency is essentially compliant with the purpose or objective of the regulations, versus a finding of failing to perform or being noncompliant, for which the Department would make a finding of noncompliance.

In fact, by providing for "substantial compliance" and a process for monitoring institutional improvement, the Department may address minor concerns before they become major concerns and ensure that they are resolved quickly and appropriately. The monitoring report will afford accrediting agencies that are in substantial compliance with the criteria for recognition the opportunity to implement corrected policies or update policies to align with compliant practices. The monitoring report provides the Department with an additional oversight tool to ensure integrity in accreditation, in cases where the accrediting agency deficiency does not rise to the level of non-compliance or a full compliance report.

Changes: None.

Comments: One commenter suggested that we could improve the definition of "programmatic accrediting agency" by beginning with the word "usually" or adding the phrase, "this does not include agencies which accredit freestanding institutions offering a specific educational program." The commenter asserted that the proposed definition does not address situations in which closely related educational programs enable students to enter a broad spectrum of graduate and professional schools, and to embark on a variety of careers. Another commenter remarking on the definition of "programmatic accrediting agency" encouraged the Department to ensure that programmatic accrediting agencies have the autonomy to focus on institutional quality.

Discussion: While we recognize that some programmatic agencies accredit schools with programs that prepare students to enter a broad spectrum of graduate and professional schools, and to embark on a variety of careers, we believe the definition does not preclude them from continuing to do so, nor does it require that a program lead to only one career pathway or option. The Department appreciates the commenter's request that we ensure programmatic accrediting agencies have the autonomy to focus on quality, especially when programmatic accrediting agencies also serve as institutional accrediting agencies at

⁸ www.wscuc.org/book/export/html/924.

institutions that offer a single program or closely related programs that align with the programmatic accrediting agency's mission. We are confident that these regulations provide that autonomy.

Changes: None.

Comments: Several commenters requested additional time to come into compliance with the change from national and regional accreditation to institutional accreditation. The commenters did not object to this change but noted that entities that distinguish between national and regional accreditation in some of their policies will need to amend those policies. They cited, for example, some State laws and regulations that distinguish between national and regional accreditation and reported that those State regulators would need time to amend those laws and adjust the procedures in implementing those laws. Some commenters noted that the legislature in their State is not slated to meet again until 2021.

Discussion: We appreciate the commenters' support and believe the State policies referenced provide further evidence for the need to eliminate the artificial distinction between regional and national accreditation because some of those policies deny opportunities for successful students to enter certain fields, it is incumbent upon State regulators to ensure the laws pertaining to an academic institution's required accreditation to qualify graduates for licensure and the procedures used to implement those laws do not disadvantage students who enroll in and complete programs at institutionally accredited institutions. While we cannot compel a State to act, we hope that States will recognize the Department's revised accrediting agency designations and make the necessary changes in their own laws or regulations.

Changes: None.

Severability (§ 602.4)

Comments: None.

Discussion: We have added § 602.4 to clarify that if a court holds any part of the regulations for part 602, subpart A, invalid, whether an individual section or language within a section, the remainder would still be in effect. We believe that each of the provisions discussed in this preamble serve one or more important, related, but distinct, purposes. Each provision provides a distinct value to the Department, the public, taxpayers, the Federal government, and institutions separate from, and in addition to, the value provided by the other provisions.

Changes: We have added § 602.4 to clarify that we designed the regulations to operate independently of each other and to convey the Department's intent that the potential invalidity of one provision should not affect the remainder of the provisions.

Link to Federal Programs (§ 602.10)

Comments: One commenter objected to the change in this section, stating that the Department proposes to remove a requirement that accrediting agencies demonstrate their worth as gatekeepers to Federal aid and fails to explain or justify why it believes that simply sharing an institution with an accrediting agency recognized as a gatekeeper to Federal aid qualifies a brand-new accrediting agency to immediately gain access to full gatekeeping authority.

Discussion: Section 602.10 does not eliminate any requirements. Rather, it provides that if an agency accredits one or more institutions that participate in HEA programs and that could designate the agency as its link to HEA programs, the agency satisfies the Federal link requirement, even if the institution currently designates another institutional accrediting agency as its Federal link.

The significance of a Federal link is that it provides the basis for the Department's recognition of an accrediting agency. A Federal link, in and of itself, does not ensure recognition, nor does it ensure participation in title IV programs. A Federal link simply affirms that the agency's accreditation is a required element in enabling at least one of the institutions or programs it accredits to establish eligibility to participate in some other Federal program.

Changes: None.

Geographic Area of Accrediting Activities (§ 602.11)

Comments: Several commenters wrote in support of the Department's proposal, stating that it will ultimately relieve students of the burden to advocate for the quality of their education if their institution of record is nationally accredited. Another commenter agreed that it is problematic when students are treated disparately based on accrediting agency, especially since all agencies adhere to the same Department requirements. One commenter thanked the Department for clarifying that an agency must conduct its activities within a region or group of States, and for emphasizing that we would not require any institution or program to change to a different accrediting agency as a result of these regulatory changes.

Discussion: We appreciate the commenters' support. The Department continues to require accrediting agencies to clarify the geographic area in which they operate, including all branch campuses and additional locations.

Changes: None.

Comments: One commenter objected to the elimination of the distinction between national and regional accrediting agencies based on a belief that there are differences in their standards for general education and faculty quality.

Discussion: The change in nomenclature is intended specifically to counter this prevalent misconception. In fact, the Department applies the same standards for recognition to both national and regional accrediting agencies. Accrediting agencies, both regional and national, are often termed "nationally recognized," including in the HEA and Department materials, which can also lead to confusion.⁹ Accrediting agencies do establish their own standards for general education and faculty quality and there is some variation in the standards they have set. For example, many agencies already allow for instructors in applied or vocational programs to substitute years of experience for academic credentials, which may not exist in some fields. However, those standards do not differ based on the agency's geographic scope or prior classification as a national or regional accrediting agency.

Changes: None.

Comments: One commenter expressed concern that the Department's actions may interfere with academic freedom, while providing little or no relief to students whose academic credits are not accepted for transfer to another institution. The commenter asserted that State and Federal regulations create a floor in which an institution can operate, and an institution may choose to have a higher ceiling. The commenter remarked that institutions will still conduct their own evaluation of transfer credits, and the Department should not have a role in setting policy on academic determinations such as transfer credits. Other commenters echoed the position that the decision whether to accept credits for transfer falls on the institution based on its independent assessment of the quality of the prior learning.

Discussion: The Department agrees that the determination of whether to accept credits for transfer falls on the institution based on its independent assessment of the quality of the prior

⁹ 20 U.S.C. 1001.

learning. The change to this regulation is designed not to interfere with academic freedom, but rather, to counter a detrimental myth that institutions that are regionally accredited are of higher academic quality than institutions that are nationally accredited. A recent review of regional accrediting standards points to a pervasive lack of focus on student learning and student outcomes among those agencies, although the same is not true among national accrediting agencies.¹⁰ Therefore, it is hard to make the case that regional accrediting agencies do more to ensure academic quality or place higher demands upon the institutions they accredit than national accrediting agencies. That said, because many of the most selective institutions in the United States are accredited by regional accrediting agencies, these agencies benefit from the reputations of a small number of their member institutions that are highly competitive and serve only the most well-qualified applicants.

The Department believes that, regardless of the historical role that accrediting agencies have played, or the institutions that comprise the membership of a given accrediting agency, each student is entitled to an unbiased review of his or her academic record and learning accomplishments when applying for transfer, employment, or graduate school, and that no student should be disadvantaged because of the geographic scope of an institution's accrediting agency.

Changes: None.

Comments: One commenter asserted that the proposed regulatory change represents an unreasonable interpretation of HEA section 496(a)(1) and is, therefore, not in accordance with the APA, which prohibits arbitrary and capricious changes to regulations, and is in excess of statutory jurisdiction under 5 U.S.C. 706(2)(C). Another commenter agreed that the proposed change does not adhere to the statutory language and suggested that, if regional accrediting agencies are not truly regional because of the manner in which they operate, and are instead national, the Department should classify them as such.

Discussion: HEA section 496(a)(1) states that "the accrediting agency or association shall be a State, regional, or national agency or association and shall demonstrate the ability and experience to operate as an accrediting agency or association within the State, region, or nationally, as appropriate." Section

602.11 specifies that the agency must demonstrate that it conducts accrediting activities within a State, if the agency is part of a State government; a region or group of States chosen by the agency in which an agency provides accreditation to a main campus, a branch campus, or an additional location of an institution; or the United States (*i.e.*, the agency has accrediting activities in every State). However, the HEA does not require the Department to consider the agency's historic footprint to be part of its scope, which the Department has previously done through regulation. Rather, the HEA refers to all accrediting agencies recognized by the Secretary as "nationally recognized" without reference to the number and location of States in which an agency accredits institutions. See HEA section 101(a)(5).

We disagree that this change is arbitrary and capricious. To the contrary, the Department believes this change is critically important given the expansion of distance learning, which allows students to attend an institution accredited by an agency whose geographic scope does not include the student's home State. This can often lead to confusion from students looking to contact their institution's accrediting agency, only to find out that the accrediting agency claims to not do business in their State. In addition, given the growth of institutions that have additional locations and branch campuses across the country, most accrediting agencies that originally accredited institutions only in a well-defined and geographically proximate group of States are now accrediting institutions in multiple States that are outside of their historic footprint. The Department recognizes that accrediting agencies previously described as "regional" are, in fact, conducting business across much of the country. Therefore, the Department seeks to realign its regulatory definitions with the statute to distinguish among agencies that have activities in one State, some or most States, and every State. As always, the Department uses the definition of "State" in § 600.2 for these purposes.

One non-Federal negotiator illustrated the need for this change with a map showing all of the States in which her agency has activities. The map (see Chart 2) revealed that the agency operates across most of the country, with activities in 48 States including the District of Columbia, as well as 163 "international activities," even though the agency was historically classified as a regional agency with activities supposedly confined to 19 States. The Department's prior classifications

inaccurately describe where that agency performs its work. To reduce confusion and to recognize that, in any given State, there may be schools accredited by more than one accrediting agency, the Department will require every accrediting agency to list the States in which it performs accrediting activities. This list could include one, some, most, or all States. However, the Department will align its nomenclature more closely with the HEA by referring to all of the agencies it recognizes as "nationally recognized" accrediting agencies.

Although the historic distinction between regional and national accrediting agencies is irrelevant given the expansion of many accrediting agencies' work to States outside of their historical footprint, there is a meaningful and clear distinction between institutional agencies and programmatic agencies. The Department will continue to recognize that distinction, including that a programmatic accrediting agency could also be considered an institutional accrediting agency if it accredits single-program institutions. We also disagree that this change is outside of the Department's statutory authority and believe instead that it is required of the Department to more accurately describe the changing nature of accrediting agencies' work. The Department will continue fulfilling its statutory responsibility under 20 U.S.C. 1099b to recognize accrediting agencies or associations and it will continue to require accrediting agencies to publish a list of the States in which they perform their work.

The negotiating committee considered reclassifying some regional accrediting agencies with broad geographic scope as national accrediting agencies but did not achieve consensus on this approach. Instead, consensus was achieved on relying upon statutory language that refers to all accrediting agencies recognized by the Secretary as nationally recognized agencies, and adhering to § 602.11 by requiring each accrediting agency to list the States in which it performs accrediting activities.

Changes: None.

Accrediting Experience (§ 602.12)

Comments: One commenter was generally supportive of the proposed changes in this section that provide additional flexibility to accrediting agencies to accredit main campuses in States in which they currently or may plan to accredit branch campuses or additional locations. However, this commenter requested the Department require an agency seeking an expansion of scope into an area where it does not

¹⁰ www.americanprogress.org/issues/education-postsecondary/reports/2018/04/25/449937/college-accreditors-miss-mark-student-outcomes/.

have prior experience to demonstrate in the application process the ability and capacity necessary to justify and support such expanded scope. Another commenter who was generally supportive of the proposed changes in this section objected to the significant additional Federal oversight, as it pertains to the number of institutions or programs that a new agency or organization may accredit, and monitoring by the Department of the agency's accrediting decisions.

Discussion: We appreciate the commenters' support for the change. However, the Department will no longer consider the accrediting agency's historical geographic footprint to be part of its scope. Instead, the geographic area (*i.e.*, list of States) in which the agency performs its work must be reported to the Department and made available to the public.

In instances in which an agency applies for a change of scope, the regulations continue to require an agency to demonstrate in the application process that it has the ability and capacity necessary to carry out that expansion of scope. However, we also recognize that an agency is not permitted to perform accrediting activities that are not yet part of its scope, which makes it a violation of the Department's regulations for an agency to gain experience doing something it is not approved to do. Therefore, since an agency is unlikely to be able to demonstrate *experience* in making accreditation or preaccreditation decisions under the expanded scope at the time of its application or review for an expansion of scope, the application may be reviewed to determine the agency's *capacity* to make decisions under the expanded scope. This provides an opportunity for an agency to gain experience making accreditation decisions in the area of expanded scope, which the Department may wish to limit to a small number of institutions or programs until the agency can then demonstrate, through experience, that it has the capacity to make additional decisions under the expanded scope. The purpose of this regulatory change is to grant limited authority for an agency that has the capacity to make decisions under an expanded scope to make such decisions and acquire—and demonstrate that it has acquired—experience doing so. Without these changes, the Department's existing regulations could be interpreted to contain circular logic (*i.e.*, an agency cannot receive approval without prior experience, but cannot obtain that experience without the authority to do so). The Department will require monitoring reports to assure

progress toward demonstrating the necessary experience.

We do not agree that these regulations impose significant additional Federal oversight pertaining to the number of institutions or programs that a new agency can accredit and the monitoring of accrediting decisions. It is the responsibility of the Department to ensure that accrediting agencies are able to successfully determine the quality of the institutions or programs it accredits, and it is wholly appropriate to limit any potential risk until such time as the Department is satisfied that the agency has demonstrated through experience that it is capable of making those determinations.

Changes: None.

Comments: Several commenters objected to the removal of the requirement that accrediting agencies seeking recognition demonstrate two years of prior experience conducting accrediting activities, and that they are trusted by peer organizations, practitioners, and other stakeholders.

The commenters argued that the proposed change to require the agency seeking recognition to cite at least one institution that uses the agency as a gatekeeper for Federal dollars is not an effective proxy for the current requirements. The commenters asserted that the Department failed to explain or justify why it believes that simply sharing an institution with an accrediting agency recognized as a gatekeeper to Federal aid qualifies a brand-new agency to immediately gain access to full gatekeeping authority.

One commenter wrote that the Department does not define what it means to be “affiliated,” nor does it propose any meaningful criteria to determine whether an accrediting agency is “affiliated” with a recognized agency. The commenter added that the Department provided no evidence of how difficult it has been for new accrediting agencies to meet the two-year rule in the past, nor how many agencies have been unable to obtain initial recognition as a result.

One commenter suggested changes to strengthen this provision, including: Placing restrictions on new agencies that gain recognition until they can demonstrate adequate experience and success in approving and reviewing programs or institutions and demonstrate financial stability, since an agency that is dependent on a small number of institutions as its revenue base creates a moral hazard wherein the agency has an incentive to maintain institutions among its membership that might not meet quality standards while also having an incentive to quickly

approve new institutions to help build its financial base; a shortened recognition period instead of the full five years; limits on the number of institutions the agency can accredit; limits on growth in enrollment among the institutions it accredits; and restrictions on the ability to approve complex substantive changes such as change of ownership or control.

Discussion: We disagree with the commenters who expressed concern that requiring at least one institution that uses the agency as a gatekeeper for Federal dollars is not an effective proxy for the current requirements. This is the requirement of the current regulations, so no changes were made to that requirement. The effect of this regulation is to permit an accrediting agency that accredits an institution that is also accredited by another accrediting agency that serves as the Federal link for that agency to obtain recognition. This is necessary to allow new agencies to gain recognition since institutions that already have an established agency are unlikely to change to a new accrediting agency until we recognize that agency.

We also disagree with the commenters' assertion that the regulation would create a situation in which sharing an institution with an accrediting agency recognized as a gatekeeper to Federal aid would qualify a brand-new agency to immediately gain access to full gatekeeping authority. First, an agency would not be “sharing” an institution with another accrediting agency. Instead, an agency would be seeking dual accreditation, while identifying one agency to serve as its Federal gatekeeper, as our regulations require. As we explained in our response to comments in § 602.10, the significance of a Federal link is that it provides a threshold minimal criterion to enable the Department to consider recognizing an accrediting agency, but a Federal link, in and of itself, does not ensure recognition, nor does it guarantee that an institution may participate in title IV programs, since other requirements also apply to such institutions. A Federal link simply affirms that the agency's accreditation is, or could meet, a required element in enabling at least one of the institutions or programs it accredits to establish eligibility to participate in some other Federal program.

The Department believes that the term “affiliated” is not ambiguous and is commonly understood to mean closely associated with another entity, typically in a dependent or subordinate position. The Department interprets the term to mean an entity that is closely associated with the recognized accrediting agency

seeking to establish a new accrediting agency.

As the Department noted during negotiated rulemaking, we do not have evidence to demonstrate how difficult it has been for new accrediting agencies to meet the two-year rule in the past, other than that there have been very few new institutional accrediting agencies recognized under the current regulations. New agencies face a difficult situation in that, under the current regulations, they need to convince an already-accredited institution to leave its established accrediting agency in the hope that the new agency gets recognized. This adds uncertainty that can harm students if their institution has any lapse in its accreditation. Alternatively, the new agency would need to identify institutions not already accredited to pursue accreditation with the new agency. That could be seen as a sign of the new agency's weakness since an institution new to accreditation is not likely to have the resources and experience of traditional institutions that have been accredited for many years. We cannot determine how many would-be agencies do not apply because they cannot identify institutions that are committed to using them for Federal gatekeeping purposes, as such an agency would never apply for recognition. Therefore, we do not have data to quantify how many agencies have been unable to obtain initial recognition as a result. We believe the dearth of new agencies shows that the barriers to entry for new accrediting agencies were so significant that they discouraged new entrants. We hope that by minimizing unnecessary barriers, new accrediting agencies will seek recognition from the Department.

We appreciate the commenter's suggestions to strengthen the regulation in this part. However, we believe that sufficient guardrails and oversight are provided throughout these regulations, and specifically within the procedures located at §§ 602.31 and 602.32, as to render these additional limitations unnecessary. The Department will continue to evaluate the agency's adherence to Federal requirements, including its financial strength, the quality and sufficiency of its staff, and its administrative capability.

Changes: None.

Comments: Many commenters expressed concern that the proposed changes that permit recognized accrediting agencies to re-organize or spin off a portion of their accrediting business by setting up a separate agency present too much risk to Federal student aid dollars. They recommended that the

Department amend the proposed regulations to more narrowly define the term "is affiliated with or is a division of" as it is used in this section. One of these commenters suggested that the definition require the new agency to have the same policies, staff, and financial and administrative capability of the original agency, or otherwise meet the requirement of two years accrediting experience in its own right. Another commenter recommended that the Department prohibit any new agency from "spinning off" of a recognized agency if that recognized agency has had any compliance issues during the last review period.

Discussion: As we discussed previously in this preamble, we use the term "affiliated" to mean an entity that is closely associated with the recognized accrediting agency seeking to establish a new accrediting agency. We do not believe a narrower definition is required, as this establishes the appropriate conditions for consideration under this section.

We do not expect that permitting affiliated entities to leverage the recognition of an accrediting agency will generate unacceptable risk to Federal student aid. The affiliation provision only satisfies the Federal link requirement for the new agency and does not provide an accelerated path to recognition. The new agency would still be responsible for satisfying the remaining requirements imposed by the Department for recognition.

Similarly, we also do not believe it is necessary to prohibit any new agency from "spinning off" of a recognized agency if that recognized agency has had any compliance issues during the last review period, since the new agency is responsible for satisfying the requirements for recognition imposed by the Department.

We do not think it is appropriate to require an affiliated agency to have the same policies, staff, and financial and administrative capability. The reason for creating an affiliated agency is likely to be based on the need to establish policies that differ in important ways in order to meet the unique needs of a subset of postsecondary institutions. Moreover, it may be impractical to expect the new agency to use staff who are fully employed by another agency. The Department would fully review, including whether they have sufficient staff to fulfill their obligations.

The financial and administrative capability of the new agency is required as part of its determination of recognition; therefore, the new agency would be expected to be independently recognized as an accrediting agency,

which is more important than relying upon the financial and administrative capability of the original agency. The only advantage being provided to affiliated agencies is the waiver of the requirement for two years of experience. All other standards for recognition must be met.

Changes: None.

Comments: One commenter disagreed with the proposal to eliminate the requirement that agencies seeking an expansion of scope provide documentation of their experience in accordance with § 602.12(b), noting that the Department's explanation that cross-referenced sections cover this is incorrect and not in compliance with the APA. Another commenter stated that the rule will impede transparency in the Department's recognition process. The commenter stated that if we only included documents viewed on-site in the record if there were issues of noncompliance, it would make it difficult for NACIQI to validate the Department's determinations and ensure that the Department is fulfilling its oversight responsibilities. This commenter also urged the Department to include an on-site visit in addition to the document production currently required and to make all document production, review, and feedback of each accrediting agency public including those held onsite.

Discussion: Section 602.32(j) requires agencies seeking an expansion of scope to provide documentation of their experience that satisfies the requirements of § 602.12(b). We, therefore, disagree with the commenter who opined that we eliminated these requirements and violated the APA. We also disagree with the commenter who concluded that excluding records that demonstrate compliance would make it difficult for NACIQI to validate the Department's determinations and ensure that the Department is fulfilling its oversight responsibilities. While the NACIQI relies, in part, on the Department staff's final analysis of the agency, it also considers other information provided under § 602.34(c). While under these regulations staff will not be required to upload every document they review, staff will be required to take notes regarding the review they conduct and provide a representative sample of evidence they identify to support their findings as part of their review. This evidence can be collected by making copies, saving images, or uploading a sample of documents reviewed.

Changes: None.

Comments: Several commenters opposed the proposed change to

§ 602.12(b)(2) that permits an agency that cannot demonstrate experience in making accreditation or preaccreditation decisions under the expanded scope at the time of its application or review for an expansion of scope to do so with limitations on the number of institutions or programs to which it may grant accreditation for a limited period of time. The commenters recognized that such agencies are also required under the proposed change to submit a monitoring report regarding accreditation decisions made under the expanded scope. One commenter requested that, if the Department proceeds with this change, that the regulation specify the agency “will” be subject to a limit of no more than five institutions or programs, within a specified volume of Federal financial dollars (e.g., \$10 million annually), until they have completed a full recognition cycle and demonstrated that they are effective assessors of quality. Another commenter suggested the regulations include a required evaluation of the outcomes and actions taken by the agency at other degree levels.

Discussion: We appreciate the commenters’ input but believe that the regulations as written sufficiently ensure that an agency that demonstrates the capacity to administer an expanded scope, once authorized to make decisions under that expanded scope, is given time to also accumulate evidence of experience in doing so. The introduction of the monitoring report is an important element in support of this provision, as it provides the Department with an additional tool to detect and address any deficiencies that may arise as an agency begins to make decisions under the expanded scope. The regulation provides that the Department may limit the number of institutions or programs to which an accrediting agency may grant accreditation under the expanded scope for a designated period of time, and we believe it is appropriate to provide the Department with this discretion. The Department does not have the statutory authority to limit the amount of Federal financial aid dollars available to institutions or programs accredited by a specific agency if the students enrolled at an institution or in a program are qualified to receive Federal student aid.

We do not agree that it is necessary in this section of the regulation to add a specific requirement that the Department conduct an evaluation of the outcomes and actions taken by the agency at other degree levels since such a review will automatically be part of the Department’s continuing oversight

of the agency, including any subsequent review for renewal of recognition.

Changes: None.

Comments: Some commenters expressed concern that lowering the requirements for accrediting agencies to become recognized is likely to have the unintended consequence of some agencies lowering their standards in order to accredit more institutions and programs.

Discussion: We disagree that we have lowered the requirements for recognition of accrediting agencies. While changes have been made to allow for more competition and to address the need for innovation in higher education, these changes do not diminish the rigor with which the Department applies its standards during the recognition process, nor do they diminish the rigor agencies apply to their accreditation of institutions or programs. The Department does not anticipate recognized accrediting agencies will lower their standards in order to accredit more institutions and programs, as the reputation of an agency is critical to its members and their students. As noted earlier, it is still possible that an agency would lower standards to attract more institutions. The Department notes, however, that even under the current regulations an agency may lower its standards to attract or retain more members, so these new regulations do not create a new risk that does not already exist. Department staff and NACIQI monitor agencies to determine whether they maintain rigorous and appropriate standards that comply with the Department’s regulations. The Department believes these regulations will give staff more capacity and means to do so. As many commenters have noted in response to our proposed regulations, accrediting agencies rely upon the trust and confidence of their peers and the community at large. The potential reputational damage that would result from lowered standards is an existential threat to an accrediting agency. In addition, if the standards no longer meet the Department’s requirements, the accrediting agency will lose recognition by the Department.

Changes: None.

Comments: A couple of commenters objected to the Department’s characterization of the growing practice of elevating the level of the credential required to satisfy occupational licensure requirements as credential inflation. They disagreed that professions that require graduate degrees may reduce opportunities for low-income students to pursue careers in those occupations.

Discussion: We appreciate the perspective of these commenters and acknowledge that, in many professions, the skills and knowledge required to be successful in an increasingly complex world necessitate graduate or professional education. However, we are also aware of situations where the elevation of degree requirements for licensure or employment is not predicated on a demonstrated inability for academic institutions to meet the education and training demands of employers at the current degree level, such as by modifying the curriculum, but on other unrelated and pecuniary factors. Finally, while Federal student aid fully supports graduate and professional education programs with student loans, the Department is keenly aware of the disparate debt burden some programs place on students whose personal circumstances require them to fully finance the cost of their graduate or professional education, without the assurance of commensurate wages to service that debt. Graduate students, who commonly obtain Graduate PLUS loans, are limited only to borrowing up to the cost of attendance less any other financial aid. Therefore, they can accumulate far more Federal student loan debt than undergraduate students. The Department is concerned that, when credential requirements for a specific occupation are elevated, employers will not necessarily increase wages to account for the added cost of pursuing a higher-level credential.

Changes: None.

Acceptance of the Agency by Others (§ 602.13)

Comments: Several commenters objected to the decision to remove and reserve this section, arguing that wide acceptance by one’s peers is an important criterion to ensure adequate oversight of institutions of higher education. Commenters opined that this wide acceptance signals the new agency is trusted by peer organizations, practitioners, and other stakeholders.

Discussion: We appreciate the perspectives of these commenters; however, as noted in the NPRM, we believe that the current provisions of § 602.13 duplicate requirements in other sections of the regulations. Commenters should note that we incorporated elements of § 602.13 into the proposal for an initial application for recognition. Proposed § 602.32(b) requires an agency seeking initial recognition to submit letters of support from accredited institutions or programs, educators, or employers and practitioners, explaining the role for such an agency and the reasons why they believe the

Department should recognize the agency. The change effectively enhances the wide acceptance requirement under § 602.13 but applies it to only those accrediting agencies seeking initial recognition. In addition, under our current regulations, agencies are not required to provide letters from other accrediting agencies as evidence of wide acceptance. Some agencies have provided letters to demonstrate that programmatic accrediting agencies accept institutional accreditation by the agency as evidence of wide acceptance, but this is not required under our current regulations.

Changes: None.

Comments: One commenter expressed concern that the regulations in this section did not provide sufficient requirements for accrediting agencies that serve as financial stewards for Federal student aid. The commenter suggests that the Department impose, at a minimum, clear numerical caps on the number of institutions and programs that the agency may grant accreditation or preaccreditation for purposes of title IV.

Discussion: Under current and proposed § 602.36, the senior Department official (SDO) has the authority to limit, suspend, or terminate recognition of an agency if the NACIQI or Department staff demonstrate that deficiencies exist with the agency's compliance in meeting standards. For this reason, we do not believe it is necessary to impose a clear numerical cap on the number of institutions or programs that an agency may grant accreditation or preaccreditation for purposes of title IV aid. The senior Department official will determine if a limit is required and what that limit should be in the event that such a restriction is warranted by the recommendations of staff or NACIQI.

Changes: None.

Purpose and Organization (§ 602.14)

Comments: Two commenters expressed appreciation for the Department's recognition that the joint use of personnel, services, equipment, or facilities does not violate the "separate and independent" requirement.

Discussion: We thank the commenters for their support.

Changes: None.

Comments: One commenter expressed support for the Department's interest in ensuring compliance with the long-established statutory requirement that accrediting agencies be "separate and independent" from any other institution, organization, or association. The commenter noted that they have

witnessed the influence of professional associations on the standards established by accrediting agencies and the impact of this influence on the creation of requirements established by State licensure boards that quash innovation and new professional entrants.

Discussion: We appreciate the commenter's support.

Changes: None.

Comments: One commenter recommended the Department revise this section to better address conflicts of interest and strengthen the role of public members. The commenter specifically suggested that we revise the definition to prevent newly retired administrators or professors from holding public commissioner positions; require all public commissioners to have a 10-year "cooling off" period from when they last worked primarily in higher education or owned equity in an institution of higher education; prohibit individuals who previously represented institutions on commissions from serving as public commissioners; and expand the ban on what constitutes employment connected to an institution in order to include individuals with any association to higher education institutions or organizations, not just individuals affiliated with the accrediting agency.

Discussion: We appreciate the commenter's concern that public members of accrediting agency decision-making bodies may have conflicts of interest that impede their ability to fully represent their constituency. However, our experience with the recognized accrediting agencies does not support the assertion that members of a decision-making body are unable to fulfill their duties because of prior employment or affiliation with a postsecondary institution. Indeed, the opportunity to meaningfully contribute while serving as a member of a decision-making body is enhanced with the specialized knowledge an individual may have acquired while working in postsecondary education, and each agency must establish and implement guidelines to avoid conflicts of interest.

Changes: None.

Administrative and Fiscal Responsibilities (§ 602.15)

Comments: Two commenters objected to the proposed changes in this section, suggesting that the changes to the required maintenance of records will impede transparency and accountability. These commenters argued that the absence of a record of the elements that informed the agency's final decision will hamper the

Department in fulfilling its oversight responsibilities.

Discussion: We disagree that the absence of a record of the elements that informed the agency's final decision will hamper the Department in fulfilling its oversight responsibilities. The Department is satisfied that the final decision documentation will provide sufficient detail to assess the agency's actions.

Changes: None.

Comments: One commenter recommended revising § 602.15(a)(4) to provide for single-purpose institutions that prepare students for a wide variety of career and professions, to read, "Educators, practitioners, and/or employers on its evaluation, policy, and decision-making bodies, if the agency accredits programs or single-purpose institutions that prepare students primarily for a specific profession."

Discussion: We do not believe the suggested change substantively improves the regulatory language. Graduates of single-purpose institutions may pursue a variety of careers and professions.

We also recognize that, while some programmatic accrediting agencies may accredit programs that prepare individuals for particular jobs, others might accredit programs that focus on unique curricular requirements or pedagogical practices, or that are based upon a shared set of underlying philosophical or religious beliefs. Such an agency might also accredit programs based on a shared set of scientific principles or educational standards. As such, an employer or a practitioner may not be able to provide feedback based on the way the program prepares individuals to perform a specific job function, but instead on the way that the program impacts other aspects of the person's contributions to the workplace more generally, including how graduates approach their work and solve problems.

Changes: None.

Comments: Two commenters requested that we clarify that the inclusion of students on decision-making bodies and employers on evaluation, policy, and decision-making bodies is optional.

Discussion: Section 602.15(a)(4) provides that the agency will include "Educators, practitioners, and/or employers on its evaluation, policy, and decision-making bodies, if the agency accredits programs or single-purpose institutions that prepare students for a specific profession." The agency may have one or more of these roles represented, but they are not required to have all of these roles represented on its

evaluation, policy, and decision-making bodies.

Section 602.16(a)(5) provides that the agency will include “Representatives of the public, which may include students, on all decision-making bodies.” The agency may include a student or students as public representatives as members of their decision-making bodies, but we do not require them to do so.

Changes: None.

Comments: One commenter recommended that we delete the phrase “which may include students” from the provision of § 602.15(a)(5) that includes members of the public on decision-making bodies. The commenter recommended that we explicitly note the possible inclusion of students in these roles in the accompanying handbook or guidelines. The commenter noted that, if subsequent experience shows that problems have materialized as a result of the presence of students, we can more easily modify the handbook or guidelines.

Discussion: We appreciate the commenter’s concern that students may not be well-suited to the work of an accrediting agency’s decision-making body, but the regulation does not require an agency to include a student as a member of the public. The intention of this regulatory provision is to recognize that, as entities that serve the interests of students by assuring the quality of postsecondary institutions, student perspectives should be represented. However, we also recognize that many, if not all, members of accrediting agency decision-making bodies consistently consider the needs of students. We note that agencies are free to include (or not include) students both before and after the effectiveness of this regulation. Students, like all members of agency decision-making bodies, must avoid conflicts of interest and adhere to other Department and agency requirements.

Changes: None.

Comments: Two commenters requested that we modify § 602.15(b)(2) that requires the agency to maintain complete and accurate records of “all decision letters issued by the agency regarding the accreditation and preaccreditation of any institution or program and any substantive changes.” The commenters suggested that we add a sentence to provide that this requirement would not apply to decision letters sent to institutions that are no longer in existence or accredited by the agency.

Discussion: We appreciate the commenters’ request, but note that, while it would likely be uncommon, a

situation could arise that would necessitate the review of decision letters sent to institutions or programs that are no longer in existence or accredited by the agency.

Changes: None.

Accreditation and Preaccreditation Standards (§ 602.16)

Comments: One commenter stated that it would not be possible for an agency to effectively address the quality of an institution or program, as required by proposed § 602.16(a), if the agency were prohibited from considering the impact of religious-based policies. The commenter suggested that such a provision gives too much deference to institutions; a religious institution can violate almost any accreditation standard so long as it justifies it with its religious mission. The commenter noted that the HEA, 20 U.S.C. 1099b(a)(4)(A), requires respect of all missions throughout the accreditation process and opines that the regulation appears to single out institutions with religious missions for special treatment. Additionally, the commenter suggested that the proposed regulatory language “does not treat as a negative factor” appears to go further than the term “respect” used in the statute.

Discussion: We appreciate the comment. In light of the United States Supreme Court decision in *Trinity Lutheran Church of Columbia, Inc. v. Comer*, and the United States Attorney General’s October 7, 2017 Memorandum on Federal Law Protections for Religious Liberty pursuant to Executive Order 13798, the Department believes that it must provide more robust protection for faith-based institutions in situations in which their ability to participate in Federal student aid programs may be curtailed due to their religious mission. Allowing accrediting agencies to make negative decisions because of the exercise of religion could easily violate the Free Exercise Clause of the United States Constitution. While the HEA requires accrediting agencies to respect the missions of all institutions, the HEA singled out the need for accrediting agencies to respect religious missions, thereby emphasizing the need for particular attention to be paid to the rights of faith-based institutions. In addition to the HEA, the Constitution protects religious missions in ways that other institutional missions are not protected. Simply requiring accrediting agencies to respect religious mission does not go far enough to ensure that faith-based institutions’ Constitutional rights are protected. In addition, the Department feels the need to clarify that respecting a religious mission includes

not considering an institution’s policies or practices related to the tenets of its faith—which could include curricular requirements, hiring practices, conduct codes, and other aspects of student life and learning—as a negative factor in making an accreditation decision. In order to avoid Constitutional concerns or violations, the Department believes it is advisable to protect institutions’ religious missions in the accreditation process, and that doing so includes not treating a policy or practice based on the religious mission as a negative factor, even if that policy or practice differs from particular points of view or priorities. The need to provide this protection has become apparent in several instances, including when the accreditation of faith-based universities has been publicly questioned by accrediting agencies due to their long-held institutional stances with a religious basis that have lost favor in academia and potentially the public at large.¹¹

In addition, under RFRA the government may only substantially burden a person’s exercise of religion if the application of that burden to the person is the least restrictive means of furthering a compelling governmental interest.

Where an accreditation decision does not respect the religious mission of an institution or uses as a negative factor an institution’s religious mission-based policies, decisions, and practices in the areas covered by § 602.16(a)(1)(ii), (iii), (iv), (vi), and (vii), the religious institution’s exercise of religion could be substantially burdened. Furthermore, removing Federal aid would not be the least restrictive means of furthering a compelling governmental interest, as long as the agency can require that the institution’s or program’s curricula include all core components required by the agency.

Thus, agencies must ensure that they do not use exercise of religion as a negative factor in their decision making.

Changes: None.

Comments: One commenter expressed concern that the inclusion of the phrase, “consideration of State licensing examinations, course completion, and job placement rates” in § 602.16(a)(1)(i) imposes a vocational or occupational goal on postsecondary education. The commenter noted that, without in any way minimizing the importance of postsecondary education which does

¹¹ www.christianpost.com/news/christian-college-says-accrediting-agencys-proposed-guideline-change-may-harm-religious-schools.html; <https://www.empirestatetribune.com/est/campus/celina-durgin/03/03/2015/gordon-college-faces-potential-loss-of-accreditation-due-to-homosexuality-policy>.

focus on vocational and occupational outcomes, it is important to preserve that aspect of higher education that is centered on the transformation of the individual, on scholarship, and the development of the mind. The commenter requested that we include an explicit statement in the regulations to the effect that accrediting agencies may use indicators and expectations that are appropriate to the field of study, and that need not be quantitative in nature.

Discussion: The language referenced by the commenter is part of the current regulations and makes clear that the use of these quantitative indicators is at the discretion of the agency, to be used only as appropriate. We did not propose changes to this language in the NPRM and are not making changes in these final regulations. We do not agree that we need an explicit statement in the regulations to the effect that accrediting agencies may use indicators and expectations that are appropriate to the field of study, as this is already permitted under the regulations. In addition, the regulations already permit an agency to rely upon qualitative indicators, or a mixture of qualitative and quantitative indicators, to evaluate an institution or program relative to its mission.

Changes: None.

Comments: Several commenters objected to this section of the regulations. One opined that only a well-rounded education, replete with the sciences, social sciences, humanities, and arts, can ensure that students are prepared not just to become members of the workforce, but also active and critical citizens of our Nation. Another offered that academic institutions need to have one set of consistent accreditation standards across all academic programs offered by the institution—arts, sciences, and humanities, as well as career-technical education. The commenter stated that individual employer training programs are outside the scope of an academic institution's core programs, and should be funded by employers, not title IV funds, adding that career and technical education is broader than an individual employer's training program and qualifies students for gainful employment with a variety of employers.

Discussion: We appreciate the commenters' ideas on a well-rounded education; however, we do note that occupational programs are at the core of many traditional institutions. Occupational majors such as teacher education, nursing, and engineering continue to dominate student

enrollments at many institutions. We disagree that our regulations imply that preparing for a specific occupation is the only goal of postsecondary education. Nonetheless, the Department of Education Organization Act of 1979 (Pub. L. 96–88¹²) prohibits the Department from exercising any direction, supervision, or control over the curriculum, program of instruction, administration, or personnel of an educational institution, accrediting agency, or association.

Changes: None.

Comments: Several commenters requested that the Department provide clarifying examples of “clear expectations” as referenced in § 602.16(a)(1). One commenter opined that “clear expectations” is not equivalent to the concept of effective application of standards and, as such, is inconsistent with the requirement in HEA section 496, 20 U.S.C. 1099b, that the Secretary is responsible for determining that an accrediting agency or association has failed to apply effectively the criteria. Another commenter noted that, as written, the regulations could cause undue burden to the agency if it is interpreted to require the establishment of quantitative standards for faculty and fiscal capacity, among other elements, that would take away flexibility of the program and institution, depending on their mission and goals.

Discussion: “Clear expectations” means that an agency must be direct and precise in communicating what requirements an institution or program must meet in order for the agency to make the determination that the institution or program is of sufficient quality to become accredited or maintain its accredited status. This does not mean that an accrediting agency must establish bright-line standards or require all institutions or programs to achieve the same quantitative results. It also does not preclude the use of qualitative standards for evaluating quality. Instead, it means that an accrediting agency must explain the criteria upon which it will make a determination that an institution is or is not providing instruction of sufficient quality. We do not believe that the use of “clear expectations” is inconsistent with the HEA; rather, we think it is far more consistent with the requirement that agencies assess institutional quality by reviewing a number of specific factors related to program design, instructional resources, and educational

facilities. We believe that the prior regulations were insufficient because it was not clear what it meant to “address” quality.

The Department does not agree that this provision increases burden on accrediting agencies, as the new regulations do not require the establishment of quantitative standards for faculty and fiscal capacity, nor do they disallow the use of qualitative measures to make a quality determination. While it is possible that an agency may wish to revise its policies and standards as a result of these regulatory changes and clarifications, which could impose a level of burden, it is not required. In some cases, accrediting agencies may wish to revise their standards to make them clearer, which may cause a short-term burden, but doing so may alleviate confusion that would, over the long run, be even more burdensome.

Changes: None.

Comments: One commenter expressed support for the proposed changes to § 602.16(a)(2), as they provide alternative pathways for institutional Federal financial aid eligibility. Another commenter expressed support for the provisions in § 602.16(a)(2)(ii) that make clear that, after the five-year limit on preaccreditation has expired, an agency must make a final accreditation action and must not place an institution or program on another type of temporary status. Two commenters expressed support for the regulations proposed at § 602.16(d)(1). One commenter noted that they provide alternative pathways for institutional Federal financial aid eligibility. One commenter appreciated that the regulations require accrediting agencies to clearly define “direct assessment” and be ready to evaluate it before they can accredit such programs.

Discussion: We appreciate the commenters' support.

Changes: None.

Comments: Two commenters objected to proposed § 602.16(d)(1). One commenter objected to the fact that the agency conducts an evaluation of the quality of institutions or programs. The commenter asserted that it is the faculty who have the expertise to make a judgment on the curriculum—and that expertise comes not only from within the discipline seeking to institute a new course, but inclusively from across the institution so that a wide perspective is provided for the quality and viability of the course or courses in question. The other commenter opined that the addition of direct assessment will increase credential inflation.

Discussion: We appreciate the first commenter's point of view; however,

¹² <https://legcounsel.house.gov/Comps/Department%20Of%20Education%20Organization%20Act.pdf>.

accrediting agencies are responsible for evaluating the academic quality of the programs or institutions they accredit. A key purpose of accreditation is to provide third-party verification of institutional or programmatic quality so, while the faculty may establish the curriculum, it is up to the accrediting agency to verify that it meets the standards put forth by the agency. In this section of the regulations, we are only amending the language to include a reference to direct assessment education, in addition to distance education and correspondence courses. We disagree with the commenter who opined that direct assessment programs would lead to credential inflation. Direct assessment programs directly measure student knowledge and learning, and have no direct bearing on the level of the credential a student earns. The credential associated with the program that considers direct assessment of student learning is determined by other factors.

Changes: None.

Comments: One commenter supported the provisions in § 602.16(f) that would permit accrediting agencies to establish alternative standards for approval of curriculum. The commenter noted that this change would enable institutions to better address the needs of employers and help students to meet the educational requirements of professional credentialing or licensing boards of their chosen profession.

Discussion: We appreciate the commenter's support.

Changes: None.

Comments: Two commenters objected to the provisions in § 602.16(f) that would permit accrediting agencies to establish alternative standards for approval of curriculum. One commenter argued that this would undermine faculty governance and is an unlawful incursion by the Department into matters of academic responsibility. Another commenter expressed concern about these provisions and requested clarification, noting it appeared that agencies would now be required to establish a standard to allow for institutions to have a separate curriculum approval process to support external entities (e.g., industry advisory boards, credentialing/licensing boards, employers) making decisions in this process and provide documentation to meet this criterion. The commenter observed that we do not restrict agencies from allowing institutions to have a separate curriculum approval process but said that it was unclear if separate approvals for external entities (e.g., employers) would now be required with this proposed provision. The

commenter asked, if this was the case, what the expectations are for documenting the standards established for those external entities. The second commenter opined that the regulation would result in the emergence of low-level industry-based accrediting standards.

Discussion: The commenters correctly noted that § 602.16(f) would permit accrediting agencies to establish alternative standards for approval of curriculum. We would not require accrediting agencies to establish a standard to allow for institutions to have a separate curriculum approval process for a program that typically leads to a specific occupation; rather, these regulations allow for the development of such standards. The Department declines to establish new requirements for documenting alternative standards, because we believe that accrediting agencies are already required to document their standards and to retain documents supporting all final decisions.

We do not expect these regulations will result in the emergence of low-level, industry-based accrediting standards, as we have not diminished the rigor with which the Department applies its standards during the recognition process, nor have we diminished the rigor agencies must apply to their accreditation of institutions or programs. To the contrary, we believe that the involvement of employers could have the opposite impact of strengthening the curriculum and increasing program rigor. As many commenters noted in response to our proposed regulations, accrediting agencies rely upon the trust and confidence of their peers and the community at large. The potential reputational damage that would result from lowered standards is an existential threat to an accrediting agency.

Changes: None.

Comments: Several commenters objected to the provisions in § 602.16(f)(4) that would permit accrediting agencies to maintain separate faculty standards for dual enrollment programs. The commenters noted that parity between dual enrollment programs and college courses is very important in order to avoid the perception that dual enrollment programs are "lesser versions" of college courses and to facilitate the transfer of credit. One group of commenters representing a rural institution noted that they have always firmly used the same credentialing and qualification standards for faculty teaching "regular" courses and those teaching "dual

enrollment" courses, as they believe that is important for maintaining quality and rigor.

Discussion: We appreciate the commenters' concerns; however, as noted in the NPRM, the Department does not believe an agency should have to choose between setting rigorous standards for faculty that may be appropriate, for example, at comprehensive or research institutions, and providing students with the best opportunities possible, including in rural locations where faculty with specific kinds of degrees are not plentiful.

In addition, the Department recognizes that, in many instances, high schools provide dual enrollment programs at their location due to unreasonable travel distances to a local college. In those instances, the high school teacher may have a different kind of academic credential but may have years of experience teaching college-level courses that are relevant to the dual enrollment opportunity. Also, the credential of choice may be very different for career and technical education instructors, where workforce experience may be far more important than the academic credential an instructor holds.

Changes: The amendatory language in the NPRM added a new paragraph (b), and we should have redesignated all of the paragraphs that followed. Current paragraphs (d), (e), and (f) should have been redesignated as paragraphs (e), (f), and (g). We have revised the amendatory language to contain the correct numbering. We also include in the amendatory language § 602.16(g)(4) that was inadvertently omitted from the NPRM. This paragraph provides that agencies are not prohibited from having separate faculty standards for instructors teaching courses within a dual or concurrent enrollment program, as defined in 20 U.S.C. 7801, or career and technical education courses, as long as the instructors, in the agency's judgment, are qualified by education or work experience for that role.

Application of Standards in Reaching an Accrediting Decision (§ 602.17)

Comments: One commenter opposed the changes to § 602.17, arguing that the Department has made the requirements an agency must meet when applying its standards to accreditation decisions less rigorous. The commenter argued that the Department has failed to provide adequate justification for the proposed changes.

Discussion: These regulations remain largely unchanged with respect to the requirements an agency must meet

when applying its standards to accreditation decisions. We are revising the requirements of § 602.17(a)(3) to provide for the consideration of academic standards that are equivalent to those that are commonly accepted to facilitate the implementation and evaluation of pilot programs. The negotiators recognized that flexibility was required to allow agencies to consider their standards through a lens that fosters innovation, and we reiterate that this alternative approach is not a less rigorous approach.

Changes: None.

Comments: Two commenters expressed support for changes in § 602.17(a)(2) that require accrediting agencies to evaluate institutions at the institutional-level and at the individual program level. One of these commenters requested additional guidance concerning the Department's expectations for institutional accrediting agencies conducting evaluations at the program level. The commenter expressed concern that conflicts could arise due to competing interests if both an institutional accrediting agency and a programmatic or specialized accrediting agency review programs.

Several commenters objected to the proposed changes in § 602.17(a)(2), arguing that the individual review of programs is not within the purview of institutional accrediting agencies. One commenter noted that institutional accrediting agencies look at each institution as a whole on an array of measures, such as financial stability, planning, and academic and related programs, including program review policies and implementation. The commenter stated that these agencies generally do not review individual programs unless something is called to their attention that affects existing standards. Two commenters wrote that this requirement would duplicate and confuse the institutional accrediting agencies' work with that of programmatic and specialized accrediting agencies, increasing the regulatory burden on accrediting agencies and institutions. One commenter requested clarification of the requirements and expectations for each type of agency, especially when a program holds an accreditation status with a programmatic accrediting agency.

Discussion: We expect institutional accrediting agencies to demonstrate that they have established and use procedures for evaluating the quality of academic programs at an institution in accordance with these regulatory provisions. This is not a new requirement, as institutional accrediting agencies have always been responsible

for evaluating the quality of the programs offered by the institutions it accredits. However, this does not mean that the agency must perform an in-depth review of every program offered by the institution. In general, an institutional accrediting agency should be aware of the programs offered by the institution and should make sure the institution has policies and practices in place to ensure that, in general, the academic programs offered meet the agency's quality standards. It is hard to imagine, in fact, how an accrediting agency could fulfill its obligation to ensure instructional or academic quality without engaging in a more detailed review of one or more of the institution's programs. Institutions are composed of academic programs and only through a review of those programs will an accrediting agency be able to determine whether an institution's policies regarding academic quality are effective in ensuring academic quality and rigor.

An accrediting agency may use sampling or other methods in the evaluation to comply with these requirements. An agency may also use the accreditation by a recognized programmatic accrediting agency to demonstrate the evaluation of the educational quality of such programs.

If conflicts arise between an institutional accrediting agency and a programmatic accrediting agency for a particular program, we would expect the institutional accrediting agency to consider the determination of quality made by the programmatic accrediting agency, as it possesses subject matter expertise. This reliance on programmatic accrediting agency's expertise mitigates duplication of effort, while providing an opportunity for collaboration and cohesion in an agency's independent assessment of program quality.

Changes: None.

Comments: One commenter suggested there is inconsistency between the requirements in § 602.17(a)(2) and (b). Section 602.17(a)(2) requires accrediting agencies to evaluate student achievement and program outcomes at the institutional and programmatic level, while § 602.17(b) permits accrediting agencies to use an institution's and program's self-study process to assess the institution's or program's education quality and success in meeting its mission and objectives, highlight opportunities for improvement, and include a plan for making those improvements. The commenter argued that there is

significant research¹³ that one can objectively measure student achievement and outcomes, and that metrics and rubrics can validate that an institution and its academic programs are high quality and that institutions are properly measuring student achievement.

Discussion: The Department disagrees that the requirements in § 602.17(a)(2) and (b) are inconsistent. The requirements are complementary, as they require an agency to evaluate whether an institution or, in the case of a programmatic accrediting agency, a program is achieving its stated objectives, and require the institution or program to conduct a self-study to assess its educational quality and success in meeting its mission and objectives, highlight its opportunities for improvement, and develop a plan for making those improvements. Nothing in the regulations precludes an agency, institution, or program from using objective measures.

Changes: None.

Comments: One commenter supported the changes in § 602.17(a)(3) that allow institutions to maintain requirements that "at least conform to commonly accepted academic standards, or the equivalent, including pilot programs." The commenter noted that this provides institutions with the flexibility to pilot innovative, experimental programs while at the same time protecting consumers and maintaining educational quality.

Discussion: We appreciate the commenter's support.

Changes: None.

Comments: One commenter opposed the changes to § 602.17(a)(3) that would allow accreditation agencies to maintain degree and certificate requirements that at least conform to commonly accepted academic standards "or the equivalent, including pilot programs in § 602.18(b)." The commenter stated that the Department has not provided examples or data to support the claim that currently institutions are resisting meaningful innovations that could benefit students and their fields, or an analysis of what the actual barriers are to enacting innovations when they are supported by faculty who teach in those fields. Another commenter suggested the Department create a probationary process for those institutions that propose an innovation to produce

¹³ Palomba, C., and Banta, T., "The Essentials of Successful Assessment" in *Assessment Essentials: Planning, Implementing, and Improving Assessment in Higher Education*, Jossey-Bass, 1999; Suskie, L., "Assessing Student Learning: A Common Sense Guide," Anker Publishing, 2004; and learningoutcomesassessment.org.

outcomes more effectively or efficiently, during which they make a case for those innovations, try them out, and implement what works.

Discussion: The Department has received input from several institutions that support the claim that commonly accepted academic standards can be an impediment to innovation. For example, an institution interested in moving to three-year baccalaureate degree programs is concerned that, although the same learning objectives may be met as in a four-year degree program, the three-year degree is not a commonly accepted academic standard. As the commenter above stated, the changes to this section of the regulations provide institutions with the flexibility to pilot innovative, experimental programs while at the same time protecting consumers and maintaining educational quality.

The creation of a probationary process for institutions that propose an innovation to produce outcomes more effectively or efficiently, during which they make a case for those innovations, try them out, and implement what works falls within the purview of the accreditation agencies, and not the Department.

Changes: None.

Comments: One commenter objected to the phrase in § 602.17(b) that reads, “highlights opportunities for improvement, and includes a plan for making these improvements.” The commenter suggested that this proposal is highly unworkable, because improvement in teaching and learning at the postsecondary level is rare, and that we should remove this language from the regulation.

Discussion: We disagree with the commenter’s assertion that improvement in teaching and learning at the postsecondary level is rare. The Academy of Arts & Sciences’ report on *Policies and Practices to Support Undergraduate Teaching Improvement*¹⁴ notes that “advances in the learning sciences are providing new insights into how students learn, and the ways in which teaching can support that learning. The main challenges are putting that knowledge in the hands of the faculty who teach undergraduates and providing them with the incentives and necessary support to use it.” We agree that improvements in teaching and learning are challenging but also note that colleges and universities across the Nation expend significant

efforts in this area.^{15 16 17 18} These regulations seek to encourage continued progress.

Changes: None.

Comments: One commenter requested changes to § 602.17(e) to better emphasize congressional intent that third-party comments play an important role in the accreditation process, not just “information substantiated” by the accrediting associations. The commenter expressed concern that associations of colleges and universities are inclined to protect their members, and the interests of their members, rather than act on the interests of students, taxpayers, and the Federal government.

Discussion: We appreciate the commenter’s request but note that we have revised § 602.17(e) only to ensure that the data the accrediting agency considers are valid. We made no changes to the third-party comment requirements in § 602.23(b). Third-party comments, along with any other information from other sources, will be used to determine whether the institution or program complies with the agency’s standards. At the same time, we must ensure that institutions maintain their due process rights and that allegations of misconduct or illegal activity are not confused with proof of misconduct or illegal actions through a final judgment by the courts.

Changes: None.

Comments: Several commenters wrote in support of the changes to § 602.17(g) that require an accrediting agency to demonstrate that it requires institutions that offer distance education or correspondence education to have processes in place to establish that a student who registers for a distance education or correspondence education course or program is the same student who participates and completes the course or program and receives academic credit. The commenters noted that removing the list of options for confirming student identity provides institutions flexibility to find solutions that fit the modality and content of the course and avoids obsolescence due to outdated technology and processes. One commenter also supported the requirement for notification of students

of any additional charges (fees, software, hardware) associated with identity verification at the time of registration or enrollment.

Discussion: We appreciate the commenters’ support.

Changes: None.

Comments: Some commenters expressed concern that the requirements of § 602.17(g) may incentivize profit-seeking entities to say that they can accomplish verifying student identity for a fee. According to the commenters, some of these entities have already asserted that test proctoring as a means of verifying student identity would no longer be acceptable because we did not include it in the proposed regulatory language. The commenters noted that, while the proposed language is clear, an additional sentence would assist institutional personnel in understanding our intent: “By removing the list of verification methods, the Department does not imply that those techniques are invalid or would not be acceptable in fulfilling the requirements of this section.”

Discussion: We are revising § 602.17, in part, to provide greater flexibility to agencies in establishing requirements for verifying student identity. We neither require nor encourage the use of profit-seeking entities to comply with this provision. Additionally, the regulations stand alone and do not require a comparison of previously included text.

We believe the regulations, as some commenters noted, clearly state the requirement and do not believe there is a need to state that the removal of the list of verification methods means that institutions could not continue to use such techniques. For example, while not included on our list of potential verification methods, test proctoring as a means of verifying student identity continues to be an acceptable method. While we agree with the commenters that removing the list of verification methods does not preclude an institution from continuing to use those methods, we do not typically include information in our regulations regarding what we are not regulating.

Changes: None.

Comments: One commenter requested that the Department revise § 602.17(g) to require accrediting agencies to prove they have robust systems to prevent what the commenter alleges to be widespread cheating in hybrid and online courses. Another commenter asserted that the proposed regulations are not sufficient to prevent student cheating, which they assert is very easy to do, especially online. The commenter stated that we should strengthen this

¹⁵ [acue.org/wp-content/uploads/2018/07/ACUE-White-Paper1.pdf](https://www.acue.org/wp-content/uploads/2018/07/ACUE-White-Paper1.pdf).

¹⁶ Blackburn, R.T., Bober, A., O'Donnell, C., & Pellino, G. (1980). Project for faculty development program education: Final report. Ann Arbor, MI: University of Michigan, Center for the Study of Higher Education.

¹⁷ academicaffairs.arizona.edu/uali-effective-strategies.

¹⁸ insidehighered.com/blogs/higher-ed-gamma/strategies-improving-student-success.

¹⁴ [amacad.org/publication/policies-and-practices-support-undergraduate-teaching-improvement](https://www.amacad.org/publication/policies-and-practices-support-undergraduate-teaching-improvement).

section to better control credential inflation associated with online cheating.

Discussion: While we understand that many people assume that online and hybrid courses are more susceptible to student cheating than brick-and-mortar courses, a recent study¹⁹ found that, “contrary to the traditional views and the research literature, the surveyed students tend to engage less in AD [academic dishonesty] in online courses than in face-to-face courses.” We do not believe there is a correlation between online cheating and credential inflation and the commenter provided no such evidence.

Changes: None.

Ensuring Consistency in Decision-Making (§ 602.18)

Comments: Two commenters supported the proposed changes in § 602.18, writing that they provide flexibility for agencies in their application and enforcement of accreditation standards, and strong support for innovation in curriculum and instructional methods at institutions that serve non-traditional students through online instructional modalities.

Discussion: We appreciate the commenters’ support.

Changes: None.

Comments: One commenter asserted that the changes proposed in § 602.18 would weaken the expectation that accrediting agencies ensure quality, create loopholes in enforcement of standards, and diminish the Department’s ability to take action against an agency that fails to act when necessary.

Discussion: We disagree that the changes proposed in § 602.18 would weaken the expectation that accrediting agencies ensure quality, create loopholes in enforcement of standards, and diminish the Department’s ability to act against an agency that fails to provide oversight when necessary. Indeed, the requirements in the section explicitly state that agencies must consistently apply and enforce standards. Moreover, while this section of the regulation applies specifically to the actions of the agency, subparts C and D detail, respectively, the requirements of the application and review process for agency recognition by Department staff and Department responsibilities, which continue to be rigorous and evidence based.

Changes: None.

Comments: One commenter requested that we revise § 602.18(a) to make explicit that “consistent” does not mean “identical.”

Discussion: “Consistent” means free from variation or contradiction, accordant, coherent, compatible, concordant, conformable to, congruent, congruous, consonant, correspondent with or to, harmonious, or nonconflicting,²⁰ whereas “identical” means “being the same.”²¹ We do not view these terms as interchangeable.

Changes: None.

Comments: Two commenters supported the proposed changes to § 602.18(c) that would allow for agencies to work with institutions and programs to determine alternative means of satisfying standards and procedures due to special circumstances or hardships. One commenter appreciated the flexibility to find creative ways to report and comply with expectations when under hardship. Another commenter appreciated the Department’s acknowledgement of the flexibility required to address student hardships and support innovation without jeopardizing recognition from the Department. The commenter is concerned, however, that allowing a program to remain out of compliance for three years, without any threat to its accreditation status, may allow for substandard education and the potential for unfair treatment of students to continue for an unreasonably long time. The commenter noted that, given the wide range of examples of circumstances that are beyond the control of an institution, from natural disasters to faculty recruitment issues, the Department should ensure that this provision continues to protect the interests of students, one of the primary purposes of accreditation.

Discussion: We appreciate the commenters’ support. We do not agree that the provisions of this part will lead to substandard education and the potential for unfair treatment of students to continue for an unreasonably long time. When curricular changes are needed for an institution to come into compliance with an agency’s standards, it could take years for those changes to be developed, approved, and implemented, and for the positive effects of the new curriculum to be observed in the outcomes of program graduates. Nothing requires an accrediting agency to provide the full amount of time for an institution to come into compliance, and the

Department expects that agencies would establish milestones that an institution must meet during the improvement period, as required in § 602.19(b). Under current regulations, agencies can provide more than 12 months for an institution to come into compliance by granting “good cause” extensions. The Department believes that accrediting agencies have the experience and expertise to determine a reasonable time for an institution to come into compliance based on the steps necessary to come into compliance and the risk to students who continue to enroll during the improvement period. The requirements in § 602.18(b) are precisely the guardrails necessary to protect students, even under unforeseen circumstances. The goals and metrics required by this provision under alternative standards must be equivalently rigorous to standards applied under normal circumstances.

Changes: None.

Comments: One commenter contended that the changes proposed in § 602.18(b) would encourage credential inflation and education expansion.

Discussion: We do not agree that the changes proposed in § 602.18(b) would encourage credential inflation and education expansion. The commenter attributed this potential risk to innovation; while we hope that innovation increases access to education for students seeking alternative postsecondary pathways, we do not associate that increase with credential inflation.

Changes: None.

Comments: Several commenters objected to § 602.18(b)(3), which states that accrediting agencies may not use an institution’s religious mission-based policies, decisions, and practices in certain areas—curricula; faculty; facilities, equipment, and supplies; student support services; and recruiting and admissions practices—as a “negative factor” in assessing the institution. The commenters asserted that this change elevates religious mission above other types of institutional mission, which the HEA similarly protects (20 U.S.C. 1099b(a)(4)(A)). Commenters also contended that the Department has not adequately justified these proposed changes. They noted that we reported that we have not received any formal complaints about an institution’s negative treatment during the accreditation process because of its adherence to a religious mission, nor have we provided any data on the number of institutions and students these changes would impact. Several commenters opined that the regulation

¹⁹ researchgate.net/publication/325249542_Predictors_of_Academic_Dishonesty_among_undergraduate_students_in_online_and_face-to-face_courses.

²⁰ [merriam-webster.com/dictionary/consistent](https://www.merriam-webster.com/dictionary/consistent).

²¹ [merriam-webster.com/dictionary/identical](https://www.merriam-webster.com/dictionary/identical).

protects religious institutions that engage in discriminatory behavior.

Discussion: Section 602.18 currently requires that accrediting agencies consistently apply and enforce standards that respect the stated mission of the institution, including religious mission. In light of the United States Supreme Court decision in *Trinity Lutheran Church of Columbia, Inc. v. Comer*, and the United States Attorney General's October 7, 2017 Memorandum on Federal Law Protections for Religious Liberty pursuant to Executive Order 13798, the Department believes that it must provide more robust protection for faith-based institutions in situations in which their ability to participate in Federal student aid programs may be curtailed due to accrediting agency decisions related to an agency's disagreement with tenets of the institution's faith-based mission, rather than actual insufficiencies in the institution's quality or administrative capability. Allowing accrediting agencies to make negative decisions because of the exercise of religion could easily violate the Free Exercise Clause of the United States Constitution. While the HEA requires accrediting agencies to respect the missions of all institutions, the HEA particularly singled out religious missions as something that agencies must respect, which suggests that Congress had concerns that faith-based institutions would be particularly vulnerable to negative accrediting agency decisions based on philosophical differences rather than insufficiencies of institutional quality or administrative capability. In addition to the HEA, the Constitution protects religious missions in ways that it does not protect other institutional missions. In order to avoid Constitutional concerns or violations, the Department believes this level of protection is appropriate regardless of whether there is a history of formal, documented complaints. When institutions believe that they have been treated unfairly based on their religious mission, they may fear retribution for issuing a formal complaint to the agency or the Department. However, in meetings with institutional leaders and organizations that represent faith-based institutions, and in the case of a recent proposed change in one agency's standards, it is clear to us that there is a real threat of negative accrediting agency action based on a philosophical disagreement. In addition, under RFRA the government may only substantially burden a person's exercise of religion if the application of that burden to the person is the least restrictive means of

furthering a compelling governmental interest. Where an accreditation decision uses as a negative factor an institution's religious mission-based policies, decisions, and practices in the areas covered by § 602.16(a)(1)(ii), (iii), (iv), (vi), and (vii), the religious institution's exercise of religion could be substantially burdened. Furthermore, removing Federal aid would not be the least restrictive means of furthering a compelling governmental interest, as long as the agency can require that the institution's or program's curricula include all core components required by the agency. Thus, although the Department does not have data on the number of institutions that we would consider to have a religious mission under these regulations or know the number of students those institutions serve, National Center for Educational Statistics, Fall Enrollment and Number of Degree-Granting Postsecondary Institutions, by Control and Religious Affiliation of Institution: Selected Years, 1980 Through 2016 (Aug. 2018) indicates that there were 881 faith-based institutions in the fall of 2016 as reported by the institutions. Institutions will continue to be subject to laws prohibiting discrimination, unless they are otherwise exempt.

During rulemaking, one negotiator described the challenges that medical schools have faced when students, the institutions that provide medical education, or hospitals that provide medical residencies are unwilling to engage in practices that run counter to their religious beliefs or missions. Although agencies and institutions found a way to ensure that students could complete their medical training without violating their conscience or principles of their faith, there is no assurance that other agencies will come to a similar compromise or that other areas of conflict will be similarly resolved. These regulations ensure that popular opinion does not prevail when in opposition to tenets of faith at a faith-based institution, which is protected under the Constitution from being penalized for its religious mission.

Changes: None.

Comments: One commenter encouraged the Department to make more explicit that, when accrediting a program at a religiously affiliated institution, the agency ensures that the program's curricula include all core components required by the agency.

Discussion: We are confident that the regulations are sufficient to make clear that a programmatic accrediting agency would ensure the program's curricula includes all of the core components required by the agency and, as

appropriate, the licensing body for the profession for which the program prepares graduates. However, in some instances a program might partner with another institution that provides instruction in areas that run counter to the principles of faith at a faith-based institution. In other instances, a program might instruct students about practices or beliefs without requiring that students adopt those practices or beliefs.

Changes: None.

Comments: One commenter expressed concern that the Department will be investigating accreditation practices as they relate to an institution's mission, including religious mission. The commenter wondered if, for example, this regulatory change is meant to ensure that the Department will enforce the right of an Islamic institution to seek accreditation from a Christian-based accrediting agency.

Discussion: The Secretary recognizes accrediting agencies to accredit institutions within an agency's individual approved scope of recognition. We do not require an accrediting agency to recognize an institution outside its approved scope, and the statute prohibits us from doing so for purposes of determining eligibility for Federal programs. If a Christian-based accrediting agency limits its scope to Christian institutions, we would not require it to accredit non-Christian institutions; thus, we do not anticipate investigating actions that are contrary to the defined scope of an agency.

Changes: None.

Comments: One commenter requested that we frame the change in § 602.18(b)(6) in a way so that the public can have confidence that an institution or program has met accreditation standards throughout the full period that it claims accredited status. The commenter is concerned that retroactive accreditation, as framed in the proposed regulations, appears to enable an institution or program to claim it was accredited at the beginning of candidacy or preaccreditation status, even if it has not received a final affirmative accreditation decision.

Discussion: We appreciate the commenter's concern and would not want the regulations to be interpreted to mean that an institution could claim retroactive accreditation effective at the point at which an institution submits an application for accreditation or preaccreditation status. It is our intention that the retroactivity would be limited to the point in the actual preaccreditation or accreditation process that resulted in an affirmative

decision that the institution or program is likely to succeed in its pursuit of accreditation, which is what preaccreditation or candidacy is intended to indicate. Thus, § 602.18(b)(6)(ii) provides that retroactive accreditation may not predate the agency's formal approval of the institution or program for consideration in the agency's accreditation or preaccreditation process.

We refer to the July 25, 2018 Memorandum²² that provides guidance regarding retroactive establishment of the date of accreditation. In accordance with a recommendation from the NACIQI, the Department agreed to permit the retroactive application of a date of accreditation, following an affirmative accreditation decision. Thus, we are codifying the current practices of many agencies, which the Department permitted prior to 2017 and once again permits.

We adopted this policy recognizing that some programmatic accrediting agencies establish student enrollment or graduation requirements that a program must achieve prior to rendering a final accreditation decision for that program. This action is necessary to ensure that students who enrolled during the accreditation review period would be eligible for certain credentialing opportunities or jobs upon completion of the program that was awarded accreditation based on the quality of the program and the accreditation review that took place during the time these students were enrolled. Without this policy, no institution would want to put students in the position of completing a program that will never enable those students to apply for licensure or work in the field.

Changes: None.

Comments: Two commenters supported the changes in § 602.18(c) that establish several conditions for alternative standards or extensions of time, including accrediting agency adoption, equivalent goals and metrics, a demonstrated need for the alternative, and assurance that it meets the intent of the original standard and does not harm students. One commenter noted that the proposed language includes enough guardrails and limitations to protect students, but also notes the importance for the Department to be rigorous in the oversight of any implementation of these provisions. One commenter suggested that the regulation would be more consistent with statute if we

required agencies to report to the Department any actions involving alternative standards or extensions of time. The commenter noted that this could occur either at the time of recognition or annually, and in a format that would make clear to the public all such instances.

Discussion: We appreciate the commenters' support. The Department assures the commenters that it will be rigorous in the oversight of any implementation of these provisions, including through the initial and renewal of recognition review processes. As required by § 602.31, the Department will ensure that the agency complies with the criteria for recognition listed in subpart B of this part by, among other things, reviewing a copy of the agency's policies and procedures manual and its accreditation standards, including any alternative standards it has established. The agency will, in effect, provide the Department with information about its alternative standards or extensions of time through the documents it submits or that staff elect to review during the recognition process. The Department does not currently track the number of times agencies have provided good cause extensions under the current regulations and does not plan to add a separate reporting requirement as a result of these regulations. However, accrediting agency policies and standards, as well as an agency's final accreditation decisions and sanctions, are made available to the public, including on the accrediting agency's website.

Changes: None.

Comments: Several commenters expressed concern that the changes proposed in § 602.18(c) that allow accrediting agencies to establish "alternative" standards for programs identified as "innovative" have the potential to create a two-tiered system that likely would result in lower standards in certain programs. The commenters acknowledged that the Department's regulations must support learning innovations like competency-based education (CBE). One commenter noted that CBE enables their students to complete their credentials and degrees more quickly, affordably, and with greater relevancy to their career goals, inasmuch as they have a clearer identification of the knowledge and skills sought by employers. However, the commenter was concerned that, as written, the regulations would create conditions in which an accrediting agency's seal of approval would not be considered "reliable" or "consistent" as required by law, and students in some programs would be subjected to lower-

quality curricula than students in other programs. The commenter opined that truly innovative programs do not need to be propped up by different agency standards in order to thrive; rather, this change could encourage accrediting agencies to lower their standards and allow programs out of compliance with the normal standards to still operate.

A group of commenters expressed concern that the changes to § 602.18(c) would reduce institutional accountability, exposing students and taxpayers to significant risk. The commenters recommended that the Department specify the circumstances under which the alternative standards may apply and create a process to verify that the alternative is equivalent to the original standard.

Another commenter suggested that the term "monitoring" is too vague to be meaningful.

Discussion: We do not believe that the ability to establish alternate standards, or to establish alternate criteria for meeting a standard or alternate metrics for evaluating compliance with a single standard, will incentivize accrediting agencies to create a two-tiered system that likely would result in lower standards in certain programs. In some instances, the agency may elect to maintain a single standard, but allow alternative ways for a particular institution or program to meet that standard. Not only does the law require accrediting agencies to be reliable and consistent, but as we stated previously, accrediting agencies rely upon the trust and confidence of their peers and the community at large. The potential reputational damage that would result from lowered standards is an existential threat to an accrediting agency. Moreover, the regulation requires the agency to apply equivalent standards, policies, and procedures; a two-tiered system would not fulfill this requirement.

The regulations include examples of the kinds of circumstances that could warrant the establishment of alternative standards. We do not believe it is reasonable for the Department to further specify the circumstances under which the alternative standards may apply, as the assumption is that some of these circumstances will be unanticipated and unprecedented. We also do not believe it is necessary to create a new process to verify that the alternative is equivalent to the original standard. When the Department conducts a review of an agency's standards, it will include any alternative standards that had been established and will ensure those standards are sufficient to ensure the quality of the institution.

²² www2.ed.gov/admins/finaid/accred/retroactiveestablishmentofthefinaldateofaccreditation72518.pdf.

We also disagree that the term “monitoring” is too vague to be meaningful. To “monitor” means to observe, record, or detect.²³ This is wholly consistent with the intention of the monitoring report.

Changes: None.

Comments: One commenter asserted that the proposed changes in § 602.18(c) violate the HEA and the APA. The commenter opined that the use of the word “consistently” in the HEA means that the accrediting agency must constantly adhere to the same standards and principles to ensure that courses or programs offered are of enough quality to achieve their stated objectives.

The commenter asserted that, because the regulations do not delineate what would constitute “special circumstances,” accrediting agencies are permitted to avoid statutory compliance. Similarly, the commenter stated that, because the regulations do not specify what “innovative program delivery approaches” or “undue hardship on students” mean, accrediting agencies would be able to avoid the statutorily required “consistency.”

The commenter objected to the provision that the agency’s process for establishing and applying the alternative standards, policies, and procedures be set forth in its published accreditation manuals rather than requiring the agency to publish its “alternative” standards or make them available to the Department, State authorizers, or students. The commenter concluded that these proposed changes are arbitrary and capricious, not in accordance with law, and in excess of the Department’s statutory jurisdiction under section 706 of the APA.

Discussion: We agree with the commenter that the use of the word “consistently” in the HEA means that the accrediting agency must constantly adhere to the same standards and principles to ensure that courses or programs offered are of sufficient quality to achieve their stated objectives. However, we do not agree that the establishment of alternative standards, criteria, or metrics is inconsistent with the intent of the statute. Rather, the regulations provide that an accrediting agency can establish a second set of standards that it consistently applies under the circumstances identified that necessitated the creation of alternative standards. The agency would be expected to apply the alternate standards fully and consistently in each

instance in which the alternate standard (or criterion or metric) is indicated.

We do not agree that because the regulations do not exhaustively enumerate what constitutes a “special circumstance,” “innovative program delivery approaches,” or “undue hardship on students,” accrediting agencies can avoid statutory compliance. Nothing in these regulations absolves an accrediting agency from its obligation to be a reliable authority as to the quality of education or training offered by the institutions it accredits.

We believe it is appropriate and adequate for the accrediting agency to document its process for establishing and applying the alternative standards, metrics, policies, and procedures in its published accreditation manuals. These agencies make these manuals available and they would, therefore, be available to the Department, State authorizing agencies, or students.

As we have stated previously, we do not agree that the changes in this part violate the HEA and the APA.

Changes: None.

Comments: One commenter requested that, in § 602.18(c)(2), we replace the word “metrics” with “expectations.” The commenter was concerned that “metrics” implies a quantitative measure.

Discussion: We do not believe that “expectations” captures the intention of word “metrics” in § 602.18(c)(2). “Metrics” is commonly understood to mean a standard for measuring or evaluating something,²⁴ while “expectations” generally refers to the act or state of looking forward or anticipating or the degree of probability that something will occur.²⁵ Indeed, because this section of the regulations refers to “metrics” in combination with “goals,” we feel comfortable that an accrediting agency could set and apply qualitative, quantitative, or a combination of qualitative and quantitative measures.

Changes: None.

Comments: One commenter requested that we clarify what “undue hardship on students” under § 602.18(d)(1)(v) means so that it is not a blanket exception. The commenter asserted that the “normal application” of an agency’s standards should always be made in students’ interests, and that current and prospective students deserve to know about any problems related to a provider’s accreditation and should not

be used as an excuse for noncompliance.

Discussion: We have intentionally not enumerated what might constitute “undue hardship on students” under § 602.18(d)(1)(v) in order to provide accrediting agencies latitude to apply their judgment in the event of unforeseen circumstances. Moreover, we strongly agree that an agency’s standards should always be made in students’ interests. It is in keeping with this principle that we determined students would be best served if accrediting agencies could be responsive to institutional circumstances that necessitate the application of alternative standards or metrics recognizing that these standards or metrics would not and could not release the agency from its duty to be a reliable authority as to the quality of education or training offered by the institutions it accredits.

Changes: None.

Comments: One commenter requested that we revise § 602.18(c)(4) to require institutions to ask students to provide written informed consent when they are participating in an innovative or alternative approach to their education.

Discussion: We appreciate the commenter’s request but believe that it would be too burdensome to require institutions to ask students to provide written informed consent when they are participating in an innovative or alternative approach to their education. Moreover, § 602.18(c)(4) applies to actions the accrediting agency will take to ensure the institutions or programs seeking the application of alternative standards have ensured students will receive equivalent benefit and not be harmed through such application, so it is left to the agency’s discretion to require the institutions they accredit to obtain consent from students to participate in an innovative or alternative approach.

Changes: None.

Comments: Two commenters supported § 602.18(d), noting that the regulation provides accrediting agencies additional flexibility in determining the length of time an institution or program may remain out of compliance in cases where circumstances are beyond the institution’s or program’s control. The commenters asserted that is a common-sense change and can help protect the interests of students, provided it is clear that these decisions are up to each accrediting agency and will not leave agencies vulnerable to legal action if they determine an extension is not appropriate. The commenters emphasized that it is up to the Department to ensure agencies use this

²⁴ <https://www.merriam-webster.com/dictionary/metrics?src=search-dict-box>.

²⁵ <https://www.merriam-webster.com/dictionary/expectations>.

²³ [dictionary.com/browse/monitored](https://www.dictionary.com/browse/monitored).

flexibility judiciously and do not allow unwarranted extensions of accreditation without compelling reason.

Discussion: We appreciate the commenters' support and reassert our commitment to ensure agencies use this flexibility judiciously and do not allow unwarranted extensions of accreditation without compelling reason.

Changes: None.

Comments: Several commenters suggested that the changes proposed to § 602.18(d) will make it easier for failing institutions to remain out of compliance with accrediting agency standards for a much longer time without serious accountability, subjecting multiple cohorts of students to subpar education. One commenter argued that we did not provide clear evidence that necessitated the increase in the additional time and number of years colleges can be out of compliance with accrediting agency standards, and opined that this change would likely exacerbate many of the issues facing students at the institution before action is taken by the agency. The commenter suggests that, if the Department were to extend this time frame, there should be stringent consequences that would discourage an institution from continuing out of compliance.

Discussion: We disagree that the changes to § 602.18(d) will make it easier for failing institutions to remain out of compliance with accrediting agency standards for a much longer time without serious accountability. The extension of time continues to be based upon an accrediting agency's determination of good cause and requires exceptional circumstances beyond the institution's control be present that impede the institution's ability to come into compliance more expeditiously. Moreover, the extension of time requires approval from the agency's decision-making body, confidence on the part of the agency that the institution will successfully come into compliance within the defined time period, and, most importantly, that the decision will not negatively impact students. We are confident that these provisions appropriately balance the need for flexibility during unusual circumstances and accountability to students who rely upon the accrediting agencies' determination of educational quality. The Department has seen multiple examples in which agencies have provided extended time beyond 12 months for an institution or program to come into compliance, especially during the recent recession when college enrollments surged, and employment outcomes deteriorated. In some

instances, more time was required to improve educational outcomes, either because new job opportunities had to open up, or the institution had to substantially reduce enrollments in subsequent classes to adjust to the reality that high unemployment rates reduced opportunities for new college graduates, regardless of which institution they attended. In other instances, colleges or universities facing economic hardships have been given more than 12 months to execute planned giving campaigns or to take other measures to control spending and balance their budget. Still other institutions have been provided good cause extensions beyond 12 months when significant issues of noncompliance or management capacity are identified, since repairing facilities and replacing management teams can require longer than 12 months to complete. In recognition of circumstances such as these, the Department provides additional regulatory flexibility, but expects agencies to use this flexibility within defined parameters to ensure institutions or programs come into compliance.

Changes: None.

Comments: Two commenters requested that we revise § 602.18(d) to address the expectations for how agencies must address noncompliance with standards, including timelines, in only one criterion to avoid confusion and conflicting terms. The commenters are seeking consistency with § 602.20(a)(2).

Discussion: We disagree that we should require consistency between the timelines in §§ 602.18(d) and 602.20(a)(2). The regulations intentionally provide latitude to the accrediting agencies to establish timelines that are reasonable and appropriate to their process and procedures. Accrediting agencies may, and we expect most will, align their timelines for addressing noncompliance with their standards, but it is at their discretion to do so. Moreover, § 602.18(d) contains optional timelines for implementation, whereas § 602.20(a)(2) contains required implementation timelines. We note that the timeline of three years used in § 602.18(d) can be used congruently with the enforcement timelines used in § 602.20, which must not exceed the lesser of four years or 150 percent of the length of the program (for a programmatic agency) or the length of the longest program (for an institutional agency). The timelines in § 602.20 are used when an agency finds an institution or program out of

compliance with a standard; whereas the timelines in § 602.18 are used when an institution or program works with an agency to address a circumstance that precludes compliance with a specific standard.

Changes: None.

Comments: One commenter requested that we amend § 602.18(d)(1)(i) to list the death of an institutional leader as an example of a circumstance that would serve as a basis for a good cause extension.

Discussion: We disagree that the death of an institutional leader serves as an example of a circumstance that would serve as a basis for a good cause extension since institutional governance procedures require that an independent board of trustees make critical decisions regarding the institution. As a result, the death of an institution's leader should not result in an institution's inability to meet the requirements of its accrediting agencies. In fact, it would be inappropriate for an agency to opine on the appointment of senior leaders by an institution as long as the institution followed its policies and procedures for selecting a new leader, which could include the appointment of that leader by a State or other governmental entity, or potentially even the appointment of an institution's leader by election. The Department notes that there are no specific requirements in statute or regulations related to institutional governance. No particular model of governance, such as shared governance or faculty governance, is required. This is one model for administering an institution, but not the only acceptable model.

In the case of private institutions, the governing board of the institution is best able to make decisions about the appointment of senior leaders. At public institutions, elected or appointed State leaders often provide input into these decisions.

Changes: None.

Monitoring and Reevaluation of Accredited Institutions and Programs (§ 602.19)

Comments: One commenter agreed with the provision in § 602.19(e) that NACIQI should review an institution when that institution's enrollment increases by 50 percent through distance education or correspondence courses in one year. The commenter noted that any enrollment change of this magnitude can place a significant strain on an institution's administrative capability and ability to maintain academic quality and rigor. Another commenter suggested that the word "effectively" in § 602.19(b) is undefined

and could result in the misapplication of this regulation. Another commenter opined that § 602.19(b) does not adequately address the problem of monitoring, asserting that the membership associations have consistently resisted taking full responsibility for monitoring and oversight.

Discussion: While we appreciate the commenters' input regarding these provisions, we note that the only changes made to the regulations in this section were to update cross-references in § 602.19(b) from § 602.16(f) to § 602.16(g), and in § 602.19(e) from § 602.27(a)(5) to § 602.27(a). There were no changes made to this section regarding the review of institutions based on changes in enrollments.

Changes: None.

Enforcement of Standards (§ 602.20)

Comments: One commenter supported the changes proposed in this section, noting that, currently, § 602.20 sets forth a virtually inflexible process for agencies to address an institution or program that is not in compliance with a standard. The commenter observed that an agency must either immediately initiate adverse action or require the institution or program to bring itself into compliance in accordance with rigid deadlines. With the proposed changes, the commenter noted that agencies would be required to provide an out-of-compliance institution or program with a reasonable timeline to come into compliance, and the timeline for compliance would consider the institution's mission, the nature of the finding, and the educational objectives of the institution or program. Another commenter who supported these changes expressed appreciation for the added flexibility for accrediting agencies in setting the length of time institutions or programs must come into compliance if found to be in noncompliance. This commenter noted that the change reflects the reality that, in some circumstances, institutions are unable to come into compliance under the current "two-year" rule.

Discussion: We thank the commenters for their support and agree that in some instances, such as when an institution must undertake significant curriculum reform to improve student outcomes, it could take more than a year to implement the change. In particular, it can take significant time to obtain approval of the new curriculum through the faculty governance process. Once approved, the institution may need to enroll and graduate new cohorts of students under that new curriculum in

order for the institution to fully demonstrate compliance.

Changes: None.

Comments: Several commenters objected to the changes proposed in this section, asserting that these changes would make it exceedingly difficult for the Department to ever hold an accrediting agency accountable. The commenters noted that current regulations already allow failing institutions to continue to operate out of compliance long past the current two-year deadline and few, if any, lose their accreditation. These commenters are concerned that the proposed flexibility to issue sanctions will make it almost impossible for accrediting agencies to hold an institution accountable in a timely manner. One commenter added that, when an institution is in the process of fixing deficiencies, we should prohibit access to any Federal financial aid programs until they are back in compliance. Another commenter asserted that the proposed regulation provides for an exceptionally long period of time to subject current and prospective students to uncertainty about the ultimate quality and value of that institution's credential. A group of commenters argued that the Department's reasoning ignores the reality that accrediting agencies often act far too slowly to protect students from predatory institutions and that students suffer when institutions continue to access title IV funds instead of closing. The commenters referenced recent high-profile closures of institutions that underscore the need for swifter action by accrediting agencies and the Department. The commenters asserted that expediency on the part of accrediting agencies could have protected tens of thousands of students from going further into debt by unknowingly continuing to attend failing institutions, and would have given those students an opportunity to transfer to higher-performing institutions or to have their Federal student loans discharged.

Discussion: Section 602.20 will not make it difficult for the Department to hold accrediting agencies accountable. The regulatory requirements for the enforcement of standards are extensive and include multiple elements that will inform the Department's oversight of the agencies' performance.

We also do not agree that the flexibility to issue sanctions will make it almost impossible for accrediting agencies to hold an institution accountable in a timely manner. In fact, the accrediting agency's decision-making body continues to have the authority to determine how long a

program or institution has to come into full compliance, and it retains the right to establish milestones that an institution must meet in order to maintain its accreditation. Agencies will continue to be held accountable for enforcing their standards and ensuring that institutions and programs are operating in compliance with them.

It would be inappropriate to withhold title IV funds from an institution that is making timely and effective progress toward resolving a finding of noncompliance. Some findings of noncompliance are not directly related to educational quality or the student experience and may have no impact on the quality of education delivered. The intention is to provide programs and institutions with enough time and opportunity to comply with the accrediting agency's standards and minimize disruption to enrolled students' pursuit of their educational goals. Withdrawing title IV eligibility may have a devastating impact on students and may jeopardize an institution's financial viability over findings of noncompliance that do not indicate that a program or institution is failing. The Department does not believe that providing more time for institutions to come into compliance will support predatory practices, as the Department expects that an agency would take immediate action or require the institution to cease those practices immediately. For example, misleading advertisements should not be allowed to continue once discovered and errors in information on an institution's website would similarly need to be corrected immediately. The extended timeframe establishes a maximum period of time but does not assume that agencies will always provide the maximum time available for an institution to come into compliance.

We do not agree that the provisions in this part provide an exceptionally long period of time for the institution or program to come into compliance. As other commenters have reported, certain metrics will not show improvement in the short term and require multiple cohorts of students to benefit from the changes the institution or program has put in place before the outcome measures reflect those enhancements.

Finally, we do not agree that these regulations will cause accrediting agencies to act slowly or that students are better served by closing, rather than improving, an institution or program. Students are best served by an effective institution that affords the student the opportunity to achieve their educational goals in a program or at an institution that has been granted accreditation from

a recognized accrediting agency. This regulation supports an accrediting agency to work closely with the institutions or programs it accredits to ensure compliance with the agency's standards and educational quality.

Changes: None.

Comments: One commenter expressed concern that providing an institution or academic program with a "reasonable" written timeline for coming into compliance based on the nature of the finding, the stated mission, and educational objectives will result in litigation on what is a "reasonable" timeline for establishing compliance. The commenter remarked that institutions will seek the longest time possible to become compliant, harming students in subpar programs, while the accrediting agency will not have clear guidelines to force improvement by a set time prior to taking adverse action. Another commenter stated that the Department did not provide evidence that the current timeline is too aggressive or overly prescriptive, and that extending the time for an institution to come into compliance will result in inadequate protections for students.

Discussion: We do not agree that the use of the term "reasonable" will result in litigation on what is a "reasonable" timeline for establishing compliance. While institutions or programs may seek to negotiate an extended period of time in which to come into compliance with the agency's standards, the accrediting agency's decision-making body will have made its determination of reasonableness based on the nature of the finding, the stated mission, and educational objectives of the institution or program. That determination will dictate the timeline to return to compliance, which can be less than, but must not exceed, the lesser of four years or 150 percent of the length of the program in the case of a programmatic accrediting agency, or 150 percent of the length of the longest program at the institution in the case of an institutional accrediting agency. Any extension of the timeline beyond that prescribed timeframe must be made for good cause and in accordance with the agency's written policies and procedures for granting a good cause extension. The assurance of educational quality and the protection of students is a primary factor in the accrediting agency's determination of a reasonable timeline for institutional improvement. Moreover, nothing in this regulation precludes the use of mandatory arbitration agreements by agencies to reduce the risk of frivolous litigation by

institutions regarding the time limits imposed by the agency.

Changes: None.

Comments: One commenter supported the proposed changes to § 602.20(a)(2) that allow additional time to document compliance, noting that, for some issues, such as program completion, it can take more than two years to show the effects of changes.

Discussion: We thank the commenter for their support and agree that it can take more than two years to implement program improvements and see their impact on future graduating cohorts.

Changes: None.

Comments: One commenter objected to the provisions of § 602.20(a) that provide intermediate compliance checkpoints. The commenter asserted that these elements are confusing, and that each accrediting agency will handle this differently.

Discussion: We do not agree that the opportunity for an accrediting agency to include intermediate checkpoints during the timeframe when a program or institution is working to come into full compliance with the agency's standards is confusing. The Department already requires each agency to apply monitoring and evaluation approaches in § 602.19(b). In § 602.20, we do not prescribe how an agency will enforce its standards but require the agency to follow its Department-approved written policies and provide the institution with a reasonable timeline for coming into compliance.

We expect that accrediting agencies may utilize this provision differently, as they are not required to include intermediate checkpoints, and we anticipate they will do so in situations where it is important to gauge the progress toward compliance an institution or program is making. Intermediate checkpoints may be particularly useful to accrediting agencies when they have determined the timeframe for improvement is approaching or at the standard timeframe limit.

Changes: None.

Comments: One commenter expressed concern that we had removed a requirement from § 602.20(a)(1) that an agency immediately initiate adverse action.

Discussion: We continue to require accrediting agencies to initiate immediate adverse action when they have determined such action is warranted. We did not remove the requirement but relocated it to § 602.20(b).

Changes: None.

Comments: One commenter requested that we establish specific intervals for

reviewing monitoring reports in § 602.20(a)(2). The commenter opined that, as written, it is not clear if the monitoring period is inclusive of, or in addition to, any good cause extension. Another commenter suggested that we clarify that changes that can be made expeditiously must be implemented more quickly. The commenter recommended that accrediting organizations develop explicit timeframes for these changes, noting that students are not protected when an institution or program is out of compliance for four years. Another commenter recommended that we require an institution to make direct disclosures of actions or sanctions to prospective and enrolled students at the start of the timeframe specified in the monitoring report.

Discussion: The changes to this section are designed to provide accrediting agencies with the flexibility to use monitoring reports and reasonable timelines for coming into compliance that are appropriate to the standard, the nature of the finding, the stated mission, and the educational objectives of the institution or program. It would not be effective to establish specific intervals for reviewing monitoring reports, as those intervals will and should vary based on the factors listed above. The Department intends the monitoring report process would be separate from the compliance report process that includes extensions for "good cause."

We do not agree that it is necessary to explicitly require that changes that can be made expeditiously must be implemented more quickly. Implementation requirements based solely on timeliness would undermine the ability of an institution to prioritize changes that may be less timely but have greater benefits to students. We are confident that the decision-making bodies of recognized accrediting agencies will ensure that the timelines they establish for coming into compliance will be reasonable and consider the speed with which a remedy could be implemented.

Finally, we do not agree that prospective and enrolled students would benefit from direct disclosures of monitoring activities. As we have stated in the NPRM and this preamble, we expect to use the monitoring report to address minor deviations from agency standards; alerting students each time a monitoring report is issued may undermine the effectiveness of student notifications for more serious findings of noncompliance subject to mandatory notification requirements.

Changes: None.

Comments: One commenter requested that we clarify in § 602.20(a)(4) what action would occur in response to a monitoring report. The commenter asserted that it is difficult to understand what it means to approve or disapprove a report.

Discussion: Accrediting agencies will develop a written policy that describes how they will evaluate monitoring and compliance reports. The Department requires the use of monitoring and evaluation approaches in § 602.19(b), which could include compliance or monitoring reports. We require agencies to describe the policies and procedures relating to such approaches currently, and that requirement would not change with the implementation of the new regulations.

Changes: None.

Comments: One commenter objected to the inclusion of “immediate adverse action” in § 602.20(b). The commenter argued that, while accrediting agency staff can take immediate action, the decision-making body may not meet for several months. The commenter suggested we modify the language to empower senior staff, in consultation with the Chair of the decision-making body (or similar), to take immediate adverse action.

Discussion: The requirement in § 602.20(b) for an agency to immediately initiate adverse action when an institution or program does not bring itself into compliance within the specified period is not new. The Department maintains that this is a reasonable and appropriate expectation for accrediting agencies to ensure compliance with its standards.

The decision-making body generates all accreditation decisions, except for the allowances in § 602.22 for the review and approval or denial of specific substantive changes. The current use of “immediate adverse action” in this section has been interpreted to mean as soon as the decision-making body first reviews and determines noncompliance. Nonetheless, many accrediting agencies have procedures in place for making accreditation decisions in between regularly scheduled meetings of the decision-making body.

Changes: None.

Comments: One commenter supported the provision in § 602.20(c) that allows an accrediting agency that takes adverse action against the institution or program to maintain the accreditation or preaccreditation of the program or institution until the institution or program has had time to complete the teach-out process. However, the commenter was concerned

that a temporary hold on accreditation action could be problematic for students seeking a closed school loan discharge and that there will be programs and institutions that retain their accreditation, but the programs will not meet licensing requirements with licensing boards due to the original deficiencies that led the institution or program to enter into a teach-out.

Discussion: We appreciate the commenter’s support. The regulation provides accrediting agencies with the latitude to maintain the institution’s or program’s accreditation or preaccreditation until the institution or program has had reasonable time to complete the activities in its teach-out plan, which could include assisting students in transferring or completing their programs, but it does not require them to do so. The intention of this provision is to ensure that students may successfully achieve their educational objectives. If the accrediting agency’s finding would result in graduates of the program not meeting licensing requirements, we would expect the agency to take immediate adverse action. Many agencies already have similar policies or practices in place.

We understand that an extension of accreditation through the teach-out process would delay the availability of a closed school loan discharge for students who choose to interrupt, rather than complete, their academic program. However, a closed school loan discharge is available to students who leave a school up to 180 days prior to its closing, which should be ample time for the school to complete its teach-out. The Department has also clarified in its recently published Institutional Accountability regulations (84 FR 49788) that, in the event that a teach-out plan extends beyond 180 days, a student who elects at the time the teach-out is announced to pursue a closed-school loan discharge rather than participate in the teach-out will retain the right to receive a closed-school loan discharge. This is the case even if, under the terms and conditions of the teach-out plan, the institution does not close until more than 180 days after the announcement of the teach-out.

Changes: None.

Comments: Two commenters objected to the provision in § 602.20(d) that allows an agency that accredits institutions to limit the adverse or other action to specific programs at the institution or to specific additional locations of an institution, without taking action against the entire institution and all programs, provided the noncompliance was limited to a specific program or location. The

commenters opined institutional accrediting agencies rarely evaluate individual programs, and that to do so may be prohibitively expensive and burdensome. The commenters further asked if the proposed changes could mean that an accrediting agency could sanction or withdraw accreditation from an institution based on a negative evaluation of a single program.

Another commenter expressed concern that these provisions could harm students who leave their program due to adverse action on their program when the rest of the institution remains open. Those students would be ineligible for a closed school discharge. The commenter suggested that an institution should be financially responsible to make these students whole and refund all tuition charges for that program when a program closes and not the institution.

Discussion: Under both the current regulations and these final regulations, an accrediting agency may sanction or withdraw accreditation from an institution based on the noncompliance with accrediting standards of a single program. However, the negotiating committee concurred that this could be an extreme reaction that could potentially harm many more students than are impacted by the deficiencies of a single program, and, accordingly, agreed to provide accrediting agencies with the ability to target their actions to noncompliant programs when an institution is otherwise compliant and serving its students.

We do not agree that institutional accrediting agencies rarely evaluate individual programs. We recognize that an institutional accrediting agency may use sampling or other methods in the evaluation to conduct their review, and that an agency may rely upon the accreditation by a recognized programmatic accrediting agency to demonstrate the evaluation of the educational quality of such programs. This does not mean that an institutional accrediting agency must separately review every academic program offered by an institution. However, if an institutional accrediting agency determines that a single program is not compliant with the agency’s standards, the agency could determine that its accreditation does not extend to that program.

We acknowledge that the HEA does not provide a remedy for students who leave their program due to an adverse action by an accrediting agency against their program when the rest of the institution remains open. As a result, the Department does not have the legal authority to require institutions to

refund tuition and fees to students whose programs the accrediting agency found to be out of compliance with its standards.

Changes: None.

Review of Standards (§ 602.21)

Comments: One commenter contended that § 602.21(a) imposes an undue burden on accrediting agencies and called for a review of standards only as circumstances dictate, noting the infrequency of changes in institutional and accreditation policies. The commenter further asserted the involvement of all relevant constituencies is an unrealistic requirement and suggested instead that we require accrediting agencies to invite participation from all relevant constituencies. They also requested that we define, or remove, the term “systematic.”

One commenter supported the proposed changes to § 602.21(d)(3) requiring agencies to respond to comments by constituencies during the review of standards. This commenter noted the process would be consistent with the comment process at other Federal agencies.

A group of commenters noted concern that the regulations would allow institutions to establish alternate standards, making it more difficult for the Department to monitor accrediting agency performance. They noted risk of dilution of standards used to evaluate institutions, as well as concern that the Department would cease to require one set of evaluation standards. They further expressed concern that the regulations do not require transparency with respect to agencies’ alternate standards, when or how the agencies may use alternate standards, or how the Department would assess compliance with agencies’ alternate standards.

Discussion: The Department considered the above comments thoroughly and notes that the Federal and non-Federal negotiators discussed many of the above stakeholders’ views and concerns during the negotiated rulemaking process for § 602.21. The Department believes that the proposed changes are consistent with HEA section 496(a)(4)(A), which requires that an agency’s standards ensure that the institution’s courses or programs are of sufficient quality to meet the stated objectives for which they are offered for the entire accreditation period.

The revisions to § 602.21 clarify that, when reviewing standards, agencies must maintain a comprehensive systematic program that involves all relevant constituencies and is responsive to comments received.

Current regulations require an institution to complete the review of all of their standards at the same time. The Department believes it is reasonable for the agency to review different standards at different time intervals since doing so may be a more efficient way of completing the review and may allow the agency to be more responsive to the most important changes needed. Moreover, when the Department conducts a review of an agency’s standards, it will include any alternative standards that an agency established and will ensure those standards sufficiently ensure the quality of the institution.

The Department believes the proposed language will continue to allow the Department to monitor accrediting agency performance and ensure an agency’s system of review is comprehensive and responsive to all constituencies while allowing for more innovation in program delivery and flexibility in response to demonstrated need, without imposing an undue burden on any party. As is currently the case, an agency would not be found to be out of compliance with the Department’s regulations if one or more relevant constituencies fails to offer comments once made aware through a public comment period that the agency is reviewing or modifying its standards.

Changes: None.

Substantive Change (§ 602.22)

Comments: Several commenters supported the proposed changes to § 602.22. One commenter specifically expressed support for the change that would allow an accrediting agency’s senior staff to approve specific, substantive changes for institutions that are in good standing, without requiring the agency’s decision-making body to approve these types of changes. Other commenters specifically supported the changes in § 602.22 that clarify the process accrediting agencies must use when reviewing substantive changes and provide agencies with more flexibility to focus on changes that are high impact and high risk. The commenters opined that the proposed language will also give agencies more flexibility to approve less risky changes by granting an agency’s decision-making body the authority to designate senior agency staff to approve or disapprove the substantive change request in a timely, fair, and equitable manner. Another commenter noted that this change will allow institutions to open satellite or branch campuses that would be accredited after opening. The commenter suggested that this relatively minor regulatory change opens the door

for greater access to higher education for underserved communities who may be limited to choosing an institution that enables them to stay close to home. The commenter noted that these changes will facilitate growth in the market for higher education, encourage competition, and ensure fewer students turn down a quality education because of location. Another commenter expressed appreciation for the provisions that require accrediting agencies to monitor rapid growth in enrollment. The commenter asserted that quick, unprecedented growth opens the door to predatory practices, and does not provide typical safeguards for quality assurance.

One commenter who opposed this change believed that it would allow political appointees to overturn long-standing Department policies. This commenter also expressed concern over potentially predatory practices and lower accrediting standards.

Discussion: We thank the commenters who supported the changes in this section. We believe these changes allow for greater flexibility for institutions to innovate and respond to the needs of students and employers, while maintaining strict agency oversight in more targeted areas, such as those associated with higher risk to students or the institution’s financial stability, such as changes in institutional mission, types of program offered, or level of credential offered.

We disagree that the regulations will not provide safeguards for quality assurance. Accrediting agencies will continue to review substantive changes for quality assurance. Providing flexibility to accrediting agencies to allow senior staff to review and approve less risky changes enables accrediting agencies to focus their resources on issues that provide the highest level of risk to students and taxpayers. We disagree with the commenter who believed that this change invites predatory practices and lower standards. While it is possible that long-time policies could change, we believe that streamlining this process will not lead to a reduction in its rigor. Accrediting agencies do not employ political appointees; the commenter may be misunderstanding the fact that agencies, not the Department, are responsible for approving substantive change requests.

Changes: We have made a technical correction to § 602.22(a)(1) to make clear that the substantive changes subject to this regulation are not limited to changes to an institution’s or program’s mission, but rather, include all

substantive changes addressed in § 602.22.

Comments: Several commenters objected to the provisions in this section, asserting that they would create a rushed review process for program outsourcing requests with less stringent standards and less accountability; increase the risk that low-quality schools will be approved to receive Federal student aid to administer poor academic programs, which will waste students' time and educational benefits in addition to taxpayer dollars; let colleges close campuses and move online with inadequate review of substantive changes; allow an existing agency to expand its scope into areas where it lacks experience; and reduce accountability among agency commissioners, shifting responsibility and potential consequences of poor decision-making onto staff.

Discussion: The changes in this section will provide flexibility to accrediting agencies while maintaining proper agency oversight of high-risk changes. While we designed these regulatory changes to reduce the cost and time required for institutions to obtain approval from their accrediting agencies, agencies will still be held accountable for making well-reasoned decisions. These changes will also allow accrediting agencies to focus their limited resources on the types of changes that pose the greatest risk to students and taxpayers. The changes will also enable the decision-making bodies at accrediting agencies to focus on the most significant and potentially risky changes. The Department believes that appropriate and adequate review processes will remain in place and that allowing agencies to focus on changes with the most associated risk will improve oversight of institutions and protection of student and taxpayer interests.

We do not agree that improved efficiency results in lax oversight. The foundation of this section of the regulations requires every agency to document adequate substantive change policies that ensure that any substantive change made after the agency has accredited or preaccredited the institution does not adversely affect the capacity of the institution to continue to meet the agency's standards.

Changes: None.

Comments: One commenter asked that we clarify whether § 602.22(a) pertains only to substantive changes in an institution's mission. The commenter suggested that the provisions in this section apply more broadly and that we remove the phrase "change to the institution's or program's mission."

Discussion: Section 602.22(a) is intended to pertain to all of the substantive changes as described in § 602.22(a)(1)(ii), and not just changes to an institution's or a program's mission. We agree with the commenter that the phrase "change to the institution's or program's mission" does not convey our intent to include all substantive changes as delineated in § 602.22(a)(1)(ii).

Changes: We are revising § 602.22(a) by removing the words "to the institution's or program's mission" to clarify that § 602.22 applies to all substantive changes as specified in § 602.22(a)(1)(ii), and not just substantive changes to an institution's or program's mission.

Comments: One commenter suggested that the regulations should allow accrediting agencies to designate future unknown innovations or changes as substantive, if those changes or innovations present a unique risk to students and taxpayers. Another commenter asked whether institutions must complete a substantive change application each time they would like to offer a program at the master's or doctoral level when the institution already offers the same area of study at the undergraduate or master's level.

Discussion: In response to the commenter who suggested that we add a provision allowing agencies to designate future unknown innovations or changes as substantive, if the innovations or changes present a unique risk to students and taxpayer, the regulations provide that agencies must require an institution to obtain the agency's approval of a substantive change before the agency includes the change in the scope of accreditation or preaccreditation it previously granted to the institution. This provision enables an institution and agency to consider applications for substantive change based on a proposed change or innovation.

We further clarify that an institution must submit a substantive change application whenever it seeks to increase its level of offering, including moving from the bachelor's level to a master's level and from a master's level to a doctoral level. An institution is not required to submit a substantive change application for each subsequent program at the same educational level.

Changes: None.

Comments: One commenter asked if we intend for § 602.22(a)(2)(ii) to provide that staff will decide the outcome, since there are accrediting agencies which do not meet every 90 days.

Discussion: Under § 602.22(a)(2)(ii), the Department intends to allow senior

staff at accrediting agencies to make decisions regarding requests for approval of written arrangements, unless the agency or its senior staff determines significant related circumstances require a review of the request by the agency's decision-making body.

Changes: None.

Comments: One commenter asserted that the Department had interpreted in an overly broad way the statutory requirement in HEA section 496(c)(4) and (5) that accrediting agencies require that institutions establish a business plan prior to opening a branch campus, and that the agency will conduct an on-site visit of that branch campus within six months of its establishment. The commenter recommended that the regulations require approvals of all locations and site visits to all approved locations within six months of opening.

Discussion: The Department disagrees that we have interpreted the statutory requirement too broadly. As the commenter notes, the HEA requires that any institution of higher education subject to its jurisdiction which plans to establish a branch campus submit a business plan, including projected revenues and expenditures, prior to opening the branch campus, and that the institution's accrediting agency agrees to conduct, as soon as practicable, but within a period of not more than six months of the establishment of a new branch campus or a change of ownership of an institution of higher education, an on-site visit of that branch campus or of the institution after a change of ownership. The regulations in § 602.22 continue to require an accrediting agency to have an effective mechanism for conducting, at reasonable intervals, visits to a representative sample of additional locations. We do not believe it is necessary or practical to require an accrediting agency to require the approval of all locations or to visit all approved locations within six months of opening. While an accrediting agency may choose to require such approvals or site visits, we believe that the agency should have the flexibility to determine this rather than for us to regulate those actions.

Changes: None.

Comments: One commenter requested that the Department reconsider the provision in § 602.22(b) that creates new circumstances under which certain activities by provisionally certified institutions will require substantive change approval by their institutional accrediting agency. The commenter urged the Department to consider limiting this new burden of review to

institutions that are on Heightened Cash Monitoring 2 (HCM2) or demonstrate some other more specific risk to students and title IV than just that the institutions are provisionally certified.

Discussion: We proposed only two additional substantive changes for which an institution placed on probation or equivalent status must receive prior approval and for which other institutions must provide notice to the accrediting agency in § 602.22(b). These include when the agency requires the institution to obtain the agency's approval of the substantive change before the agency includes the change in the scope of accreditation or preaccreditation it previously granted to the institution, and when the agency's definition of substantive change covers high-impact, high-risk changes.

We do not believe it would be helpful to limit this change to those institution who are on HCM2 or who demonstrate specific risks. We believe this provision offers an important review that would only rarely occur if we limited the use to those circumstances suggested by the commenter.

Changes: None.

Comments: Three commenters opposed the revisions to the substantive change regulations, arguing the Department failed to provide enough evidence to justify the changes and to specify how we would assess whether a change is "high-impact and high risk." The commenters opined that the changes are incongruent with statutory requirements pertaining to the approval of branch campuses and direct assessment programs.

Discussion: The revisions to the substantive change regulations are designed to provide accrediting agencies more flexibility to focus on the most important changes. We believe that this targeted, risk-based approach focuses the agency's decision-making body's efforts on more relevant or risky issues in a changing educational landscape, while allowing an agency to delegate lower-risk decisions to staff. The Department considers a high-impact, high-risk change to include those changes provided as examples in the regulations (§ 602.22(a)(ii)(A)–(J)), such as substantial changes in the mission or objectives of the institution or program; a change in legal status or ownership; changes to program offerings or delivery methods that are substantively different from current status; a change to student progress measures; a substantial increase in completion requirements; the acquisition of another institution or program; the addition of a permanent site to conduct a teach-out for another

institution; and the addition of a new location or branch campus.

We do not believe that the changes contradict the statutory requirements for the approval of branch campuses and direct assessment programs. HEA section 498 (20 U.S.C. 1099c(j)) provides the Secretary with the latitude to establish regulations that govern the certification of a branch of an eligible institution.

Changes: None.

Comments: One commenter asked that we clarify § 602.22(b)(2), which refers to "A change of 25 percent or more of a program since the agency's most recent accreditation review." The commenter asked if this is in reference to a change in the number of credit hours associated with the program and, if so, whether we would consider all courses, only courses within the discipline, or only general education courses.

Discussion: When we referred to "A change of 25 percent or more of a program since the agency's most recent accreditation review" in § 602.22(b)(2), we meant a single change, or the sum total of the aggregate changes, to a program's curriculum, learning objectives, competencies, number of credits required, or required clinical experiences. This would include changes in the general education courses required for program completion and not merely the courses within the discipline, program, or major.

Changes: We have revised § 602.22(b)(2) to clarify that we would consider an aggregate change of 25 percent or more of the clock hours or credit hours or program content of a program since the agency's most recent accreditation review to be a substantive change requiring prior approval under § 602.22(b)).

Comments: One commenter requested that we add the acquisition of any other institution, program, or location to the required representative sample of site visits to additional locations in § 602.22(d).

Discussion: As stated earlier, the Department proposes revisions to the substantive change regulations to provide accrediting agencies more flexibility to focus on the most important changes. While an accrediting agency may choose to implement a policy such as what the commenter suggested, we do not believe it is appropriate to broadly regulate such activity.

Changes: None.

Comments: One commenter requested clarification as to when an institution must seek approval of a new location

instead of reporting the change under § 602.22(a)(1)(ii)(J) and § 602.22(c).

Discussion: As stated in § 602.22(c), once an institution receives accrediting agency approval for two additional locations, it may report subsequent locations, rather than seeking additional approval, if it meets the conditions in § 602.22(c).

Changes: We have made a technical correction in § 602.22(c) to clarify that institutions that have successfully completed at least one cycle of accreditation and have received agency approval for the addition of at least two additional locations *must* report these changes to the accrediting agency within 30 days, if the institution has met criteria included in this section of the regulations.

Operating Procedures All Accrediting Agencies Must Have (§ 602.23)

Comments: Two commenters wrote in support of the requirements in § 602.23(a)(2) that an accrediting agency make written materials available describing the procedures that institutions or programs must follow regarding the approval of substantive changes.

Discussion: We appreciate the commenters' support.

Changes: None.

Comments: One commenter endorsed the change in § 602.23(a)(5) that requires the mandatory disclosure of names, academic and professional qualifications, and relevant employment and organizational affiliations of members of the agency's decision-making bodies and principal administrative staff.

Discussion: We appreciate the commenter's support.

Changes: None.

Comments: One commenter supported the change to § 602.23(d) that permits publishing address and telephone information as an alternate form of agency contact information.

Discussion: We appreciate the commenter's support.

Changes: None.

Comments: Two commenters agreed with the change to § 602.23(f) that reserves preaccreditation status for institutions and programs that are likely to succeed in obtaining accreditation. The commenters noted that this is an important requirement, as institutions may be in preaccreditation status for five years and then may not succeed in getting accreditation. Students may suffer if their school does not achieve accreditation, and, if the school closes, taxpayers will be responsible for closed school loan discharges. One of the commenters also supported requiring

accrediting agencies to obtain a teach-out plan from all preaccredited institutions and recommended that they update the teach-out plans every six months if they include partner institutions, as those agreements and the regional education landscape change frequently.

Discussion: We appreciate the commenters' support. We do not believe it is practical or necessary to require accrediting agencies to obtain updated teach-out plans from pre-accredited institutions every six months, nor would it be reasonable to expect an institution to seek contractual teach-out agreements with other institutions simply because the institution or program is in a preaccredited status. If an accrediting agency determines that it is necessary for an institution to implement its teach-out plan, the agency can request that the institution seek or enter into one or more contractual teach-out agreements with partner institutions that offer the courses or programs needed by the closing institution's students.

Changes: None.

Comments: A group of commenters objected to § 602.23(f), asserting that it is unclear from the Department's reasoning exactly what risks, if any, the proposal to maintain preaccreditation status will mitigate. The commenters argued that the proposal increases risk by not removing title IV eligibility from a school that has demonstrated its inability to provide a quality education and allowing students to continue to attend that school for up to four months or longer. The commenters asserted that, if the Department agrees to then recognize those students' work as "accredited," the students will still have to market themselves to other institutions and employers and will be ill equipped to effectively do so, having received such a poor education.

Discussion: We intend for this provision to ensure that students can successfully achieve their educational objectives at the institution where they chose to enroll. We do not agree with the commenters' assertion that the student will have received a poor education, as there are many factors, apart from the quality of the education provided, that can result in an institution not receiving accreditation after a period of preaccreditation. An accrediting agency, in awarding preaccreditation, must believe that the program or institution is likely to obtain accreditation, meaning that the educational quality must meet the agency's requirements. Students may use title IV funds to enroll in a preaccredited program. Therefore, the

accrediting agency must believe that it is of appropriate quality to likely become accredited. It would be detrimental to students to allow them to enroll in a preaccredited program and subsequently determine that the credits they earned during that enrollment would likely not transfer to another institution if the program is not fully accredited. Without such a provision, an institution could not recruit students to a preaccredited program, and the Department could not allow those students to obtain title IV funds. This would reduce the likelihood of institutions starting new programs in areas where there may be significant workforce demand.

Changes: None.

Comments: One commenter supported the proposal in § 602.23(f)(ii) to require accrediting agencies to insist on a teach-out plan from preaccredited institutions. However, the commenter suggested this provision does not ensure adequate protection. The commenter recommended that the Department require a teach-out agreement and that adequate funds are set aside to implement the agreement if the school does not receive accreditation.

Discussion: We appreciate the commenter's support and suggestion. However, we believe it would be impractical to require preaccredited institutions to establish teach-out agreements, as these are contractual arrangements that are based on the number of students enrolled in a program (among other factors) and institutions would need to update them each term in order to accurately reflect the current status of the program. Also, an institution cannot force another institution to enter into a contractual agreement, especially since a teach-out agreement often includes financial arrangements between the two institutions. The Department cannot require any institution to enter into a contractual agreement with another institution and it would be difficult to know in advance what financial arrangements would be required by the receiving institution in the event of a teach-out, since this could change based on the number of students to be served at the time of the teach-out and other factors. The Department also lacks the authority to require institutions to post a letter of credit simply because they are in a preaccredited status.

Changes: None.

Comments: One commenter supported the proposed language in § 602.23(f)(2) that allows the Secretary to consider all credits and degrees earned and issued by an institution or program holding preaccreditation from a

nationally recognized agency to be from an accredited institution or program. The commenter observed that this may help clarify what preaccreditation status means, prevent harm to students who attend preaccredited institutions or programs, and recognize that graduates of preaccredited programs are workforce-ready and, therefore, should be eligible for State or national credentials.

Discussion: We appreciate the commenter's support.

Changes: None.

Comments: One commenter objected to the provisions of § 602.23(f)(iv), stating that instead of adding protections for students in the event the institution does not obtain accreditation, the Department proposes to allow an institution to maintain its preaccredited status, continue serving students, and collect student and taxpayer money even when it is now guaranteed the institution or program will not gain accreditation. The commenter asserted that preaccreditation status and accredited status are fundamentally not the same and that we should not consider them to be equal.

Discussion: The Department has not proposed that a preaccredited program or institution continue to be able to operate in the rare instance that an agency makes a final decision not to award full accreditation. Instead, the Department seeks to protect students enrolled in preaccredited programs or institutions so that, in the event the program or institution does not receive full accreditation, the students are able to transfer credits and complete their program at another institution. The Department considers both preaccreditation and accreditation to be an accredited status. Since both accreditation and preaccreditation may allow a student to access title IV funds, the Department is committed to providing protections to students to ensure that the credits they earned using title IV funds can be transferred to other institutions. Several accrediting agencies require institutions or programs to graduate a cohort of students before they will grant full accreditation. However, the students who complete the program during a period of preaccreditation may not be eligible to sit for the licensure exam if the requirement to do so necessitates that they have graduated from an accredited program. Thus, it is important that these students be afforded the opportunity to fulfill their educational objective to be licensed in the profession for which they were prepared if the program or institution

became accredited based on the agency's review of the institution or program that took place during the time in which the student was enrolled. Accrediting agencies have reported to us that preaccredited programs and institutions typically proceed to fully accredited status. The agencies noted that they grant preaccreditation status when the agency has confidence that the institution or program will ultimately become accredited, but some agencies will not award full accreditation until they review licensure exam pass rates or other employment outcomes dependent upon a student having attended an accredited institution.

Changes: None.

Additional Procedures Certain Institutional Accreditors Must Have (§ 602.24)

Comments: Several commenters supported the Department's proposed changes to § 602.24. Collectively, the commenters expressed appreciation for the flexibility afforded to institutions and accrediting agencies by the proposed rules, allowing them to focus more on innovating and providing students with a quality education.

Discussion: We appreciate the commenters' support for these proposed changes and the Department's efforts to facilitate innovation and reduce regulatory burden.

Changes: None.

Comments: One commenter objected to the elimination of the requirement in § 602.24(a) for an institution to include in its branch campus business plan submitted to the accrediting agency a description of the operation, management, and physical resources of the branch campus. The commenter asserted that the proposed changes fall short of what is required by statute—namely that “any institution of higher education subject to [an accreditor's jurisdiction] which plans to establish a branch campus submit a business plan, including projected revenues and expenditures, prior to opening a branch campus.” The commenter further asserted that the proposed revisions fail to establish what is a reasonable period needed to judge the appropriateness of opening a branch campus, and that the Department failed to conduct any cost-benefit analysis or adequately justify the change.

Discussion: We disagree with the commenter that the changes to § 602.24(a) fail to meet the statutory requirements. We proposed amendments to this provision specifically to remove requirements that we believe go beyond the statutory requirements. Additionally, we believe

the requirements in § 602.24(a) were either unnecessarily prescriptive or duplicated requirements in the revised § 602.22. Regarding what we consider a reasonable time period for an agency to judge the appropriateness of opening a branch campus, we do not believe a compelling reason exists for the Department to impose strict calendar timeframes around such determinations. The amendatory text requires, with respect to branch campuses, an agency to demonstrate that it has established and uses all of the procedures prescribed in § 602.24(a). We expect an agency's protocols to facilitate this being accomplished in a timely manner. The reasons for the proposed changes to § 602.24(a), removing the requirements for an institution to include in its branch campus business plan a description of the operation, management, and physical resources of the branch campus, and for an agency to extend accreditation to a branch campus only after the agency evaluates the business plan, are explained in the July 12, 2019 NPRM and reiterated above. We do not believe it is further necessary to conduct a cost-benefit analysis to support these changes or that such an analysis is germane to the discussion of whether they are needed.

As the Department noted during negotiated rulemaking, there are no data upon which to base the establishment of a reasonable period to judge the appropriateness of a branch campus. However, we believe the time required to obtain approval was, in many cases, so significant that it impeded institutional growth and student access. We hope with these changes that more closely align with the statute, we will enable institutions and accrediting agencies to be nimbler and more responsive to student demand. The regulations maintain important oversight protections by requiring the institution to submit a business plan and the accrediting agency to conduct a site visit within six months.

Changes: None.

Comments: Two commenters requested that the Department delete the reference in § 602.24(c)(2)(i) to institutions merely placed on the reimbursement payment method described in § 668.162(c)—commonly known as HCM. One of those commenters stressed that while we typically place institutions with composite scores of less than 1.5 on HCM1, this does not mean such institutions are in danger of closing. The commenter further noted that if no changes are made to the calculation of the composite score to reflect the recent change by the Financial Accounting

Standards Board regarding leases, institutions will fail financial responsibility and be put on HCM1 when, economically, nothing has changed, and that institutions can be placed on HCM1 for various other reasons, including noncompliance with Clery Act standards or other regulatory matters. The commenter concluded the Department should revise § 602.24(c)(2)(i) to pertain only to instances where an institution has been placed on the reimbursement payment method under § 668.162(c) or the HCM payment method requiring the Secretary's review of the institution's supporting documentation under § 668.162(d)(2).

Discussion: We believe the commenters may have misinterpreted proposed § 602.24(c)(2)(i), which requires submission of a teach-out plan if the Secretary notifies the agency that it has placed the institution on the reimbursement payment method under § 668.162(c) or the HCM payment method requiring the Secretary's review of the institution's supporting documentation under § 668.162(d)(2). Under the reimbursement payment method, an institution must, in addition to identifying the students or parents for whom reimbursement is sought, credit a student's or parent's ledger account for the amount of title IV, HEA funds he or she is eligible to receive, submit documentation showing that each student or parent included in the request was eligible to receive the title IV, HEA program funds requested, and show that any title IV credit balances have been paid. HCM2, described in § 668.162(d)(2), mirrors the reimbursement payment method except that the Secretary may modify the documentation requirements and procedures used to approve the reimbursement request. HCM1, found in § 668.162(d)(1) and identified by the commenter as the cash monitoring payment method on which the Department commonly places institutions with low composite scores, does not require the submission of documentation establishing the eligibility of a student. Institutions on HCM1 are not subject to the provisions of proposed § 602.24(c)(2)(i).

Changes: None.

Comments: One commenter asked the Department to clarify the teach-out requirements in § 602.24(c) related to travel. The commenter questioned the standard that the teach-out arrangement should not require travel of substantial distances or durations, on the basis that it is vague and does not address situations where geographically convenient options for on-the-ground

programs are limited due to being at capacity enrollment or capped enrollment. The commenter concluded that it is insufficient merely to name local institutions with similar programs, as those programs are frequently unable to assist with a teach-out.

The same commenter agreed with the Department that a teach-out by an alternative delivery modality is insufficient unless an option for a teach-out via the same delivery modality as the original educational program is also available. However, the commenter contended that the institution should also ensure there is a geographic limitation on this requirement, that is, an institution should not be permitted to have its own distance education program be offered as a teach-out when the on-ground offering is 200 miles away from the original on-ground location and there are significant transportation barriers.

Finally, the commenter agreed with the Department that an accrediting agency should be permitted to waive the requirements related to the percentage of credits that must be earned at the institution awarding the educational credential for students completing their program under a written teach-out agreement, but recommended that the waiver also apply to institutions allowing students to transfer to the institution in lieu of a written teach-out agreement.

Discussion: We agree that merely naming local institutions with similar programs does not constitute a teach-out agreement, yet we note that it may be appropriate in a teach-out plan.

We appreciate the commenter's support regarding the insufficiency of alternative delivery modes for a teach-out and agree that it may be an option available, but it cannot be the only option provided to students. We further agree that the teach-out needs to provide the same method of delivery as the original education program.

We do not, however, agree that we should prescribe a specific geographic limitation. The regulations require that the teach-out agreement provide students access to the program and services without requiring them to move or travel for substantial distances or durations. We believe that the accrediting agencies (and the States) should determine what is a reasonable distance or travel duration based on the circumstances of each location. For example, in some parts of the country, a 10-mile distance is the equivalent of more than an hour of driving time. In other parts of the country, it is unlikely that another institution would be available within a 10-mile radius and so

it might be reasonable to expect students to travel farther to complete their program. The distance noted by the commenter would not be a reasonable distance. While we would support allowing the institution to offer its own distance education program as an option to its students, we would not allow that offering to supplant the requirement to provide a reasonable "brick-and-mortar" option to the students if the original education program was offered as an on-ground program.

We thank the commenter who supported the Department's waiver of requirements related to the percentage of credits earned at the institution for students completing their program under a written teach-out agreement. We also agree that the same waiver should be available to students who transfer credits following a school closure, even if that transfer is not part of a formal teach-out agreement. However, we do not agree that this requires a change to the regulatory language in this section, as it is within the accrediting agency's authority to grant this waiver when it is appropriate to do so.

Changes: None.

Comments: One commenter asserted that the Department should require any institution that closes, as a condition of closing, provide current transcripts to every student, past and present, as well as refund to students all amounts paid retroactive to the beginning of the current semester. The commenter stated that this would hold for-profit institutions to the same standard as State-funded institutions.

Discussion: We appreciate the commenter's concern for preservation of students' academic records and agree that closing institutions have an obligation to preserve those records and transfer them to the appropriate entity, as described in their teach-out plan. Teach-out plans must include arrangements for maintenance of records as well as instructions to students for how they can obtain those records. However, we do not have the authority to require a closing school to distribute transcripts to students. Additionally, most institutions require the submission of an official transcript directly from an institution for admission consideration. An institution might not consider a transcript submitted from an applicant to be an official transcript.

The Department does not have the authority to require institutions to refund students for non-title IV tuition payments made. We agree that closing schools should reimburse students if

tuition was paid for classes that will no longer be offered, but we do not have the authority to require that of institutions. We applaud States that require a closing or closed public institution to refund students' tuition and fees for the final term. However, we are aware that some States operate tuition recovery funds to enable students to receive financial reimbursement for some or all of the non-title IV tuition payments made in the event that an institution closes.

Changes: None.

Comments: One commenter, while generally supportive of the proposed changes to § 602.24, suggested we prohibit closure of an institution based solely upon loss of accreditation. The commenter believed institutions should remain open for a period of one year or more after removal of accreditation to allow for students to determine whether they wish to complete their educational program at that institution. The commenter concluded that we should not allow the institution to solely determine the fate of students' academic careers.

Discussion: The Department appreciates the commenter's support on these changes. We note, however, that we cannot prevent an institution from closing when it loses accreditation since many students could not continue their enrollment without access to title IV funds. Also, loss of accreditation is a circumstance that enables students to seek and receive a closed school loan discharge. The Department does not determine whether an institution is open or closed. The Department determines an institution's eligibility to participate in the title IV programs and recognizes that, in many instances, the loss of title IV eligibility makes it impossible for an institution to continue educating students.

Changes: None.

Comments: One commenter noted with regard to the proposed revisions to § 602.24(c)(2)(iii) that a school that is on the verge of losing its recognition or intends to cease operations may not fully cooperate in carrying out teach-out mandates, assurances to students may not be implemented, and that expecting an orderly transition is not always realistic. The commenter believed the Department should conduct a careful review of previous terminations and closures to see if there are lessons to learn and apply.

Discussion: The Department agrees with the commenter that an orderly transition does not occur in all cases, yet we strive for a transition that is as smooth as possible. The Department has examined, and will continue to

examine, school closures so that we and other triad partners can collectively assist students impacted by closures. Our experience suggests that students are best served when they have options to complete their program, including through an approved teach-out plan or teach-out agreement.

Changes: None.

Comments: One commenter recommended that the Department revisit proposed § 602.24(c), outlining the circumstances under which an accrediting agency must require an institution to submit a teach-out plan. The commenter urged the Department to not rely on provisional certification as an indicator of trouble—since that is not always the case—and instead consider identifying problem institutions as those the Department has placed on HCM2 or has taken action against under subpart G of the General Provisions.

Discussion: We agree with the commenter's position that provisional certification does not always indicate trouble. However, we believe that provisional certification imposes a higher level of risk to students and taxpayers and increases the likelihood that a school closure might ensue. Some accrediting agencies require all institutions to keep teach-out plans on file at all times. Teach-out plans do not require an institution to take any action, but instead to describe what the institution would do, and potential programs or institutions that could accept students, if the institution closes. Teach-out plans provide important information to the Department and States in the event of a school closure; thus, it protects students and taxpayers for institutions to have these plans on file when the institution is provisionally certified. The number of institutions on HCM2 or subject to an action under subpart G of the General Provisions consistently remains small compared with the number of provisionally certified institutions. Keeping in mind a teach-out plan acts as a preventive measure, we do not agree with the commenter that limiting the requirement to such a small number of institutions would help us achieve the desired outcome. We seek, instead, to identify institutions at risk for closure and ensure that a plan is in place so that the Department and States can assist students in transitioning to new programs and accessing their academic records if their institution closes.

Changes: None.

Comments: One commenter commended the Department for considering and including parts of a proposal submitted by negotiators strengthening teach-out requirements,

securing teach-out agreements, and putting protections in place for students enrolled in schools at risk of closure, but stated the proposal in the consensus language does not go far enough in guaranteeing students will have high-quality teach-out options in the event their school closes. The commenter offered that the Department should require teach-out agreements, not make them optional, and we should clearly distinguish when an institution needs an agreement instead of just a plan. The commenter further asserted that the Department should require accrediting agencies to secure teach-out agreements when schools exhibit particular risk factors. The commenter suggested that, in the event of precipitous closure, accrediting agencies have routinely requested nothing more than teach-out plans when an institution exhibits warning signs, because under current regulations, securing a teach-out agreement is at the discretion of the agency and almost never results in the agency requesting a teach-out agreement.

Discussion: We appreciate the strong support from this commenter and the non-Federal negotiators who worked with us to create a more robust framework to protect students. While we seek to provide protections for students affected by a school closure and strive to assist with the transition to high-quality academic programs, we cannot guarantee students will have high-quality teach-out options in the event their school closes. However, teach-out plans can be helpful to students, States, and the Department when a school closes and we are trying to help students identify another institution where they can complete their program and obtain the records they need to document their attendance or prior degree completion at the closed school.

We do not believe it is possible for either the Department or the accrediting agencies to force an institution to engage in a teach-out agreement because such an agreement requires a contractual agreement between the closing school and a continuing school. Neither the Department nor an accrediting agency can require a continuing institution to enter into a teach-out agreement with a closing institution, and in some instances, the receiving institution in a teach-out agreement will accept students into some programs but cannot accommodate students in all programs or can accept some but not all students into a particular program. Teach-out agreements identify which students a continuing school will receive, how many credits it will receive in transfer,

and any financial arrangements required to support the agreement. Neither the Department nor an accrediting agency can require an institution to accept students or credits from another institution. Moreover, the statute only requires that institutions have teach-out plans in place. We recently learned that some accrediting agencies will not review a teach-out agreement until the closing school has closed—at which point it may be too late to help students complete their program. We clarify in this regulation that agencies can and should request that an institution pursue teach-out agreements and review teach-out agreements prior to a school's closure. However, we cannot force an institution to enter into a contract with another institution, or to accept students into a program for which the receiving institution believes the transferring students are underprepared.

Changes: None.

Comments: One commenter expressed concern about the Department's proposal to remove the required agency review of institutional credit hour policies as well as the specifics of how an agency meets the requirements for such review in § 602.24(f).

Discussion: We continue to believe the agency review requirements are unnecessarily prescriptive and administratively burdensome without significantly improving accountability or protection for students or taxpayers. However, we note that the definition of "credit hour" in § 600.2 requires that the amount of student work determined by an institution to comprise a credit hour be approved by the institution's accrediting agency or State approval agency. Moreover, nothing precludes an accrediting agency or State approval agency from examining or questioning an institution's credit hour policies either as part of a routine evaluation of that institution's academic programs or as the result of academic concerns brought to the attention of the accrediting agency.

Changes: None.

Due Process (§ 602.25)

Comments: Several commenters questioned the reasoning behind the proposed change to due process, stating that the Department did not explain how the change helps institutions understand accreditation status decisions. Further, the commenters believed the proposed changes would not clarify decisions issued by the agency's decision-making body for institutions or programs. The commenters contended that the Department should not permit an agency to re-evaluate its original

decision if an appeals panel reverses it but does not specifically remand the decision. In such a case, these commenters asserted, no further agency action should be allowed.

Discussion: We considered views on § 602.25 similar to the commenters during negotiated rulemaking. The Department believes that the changes sufficiently satisfy the intent of HEA section 496(a)(6), which provides that an agency must establish and apply review procedures throughout the accrediting process that comply with due process. The Department permits agencies to remand appeals panels' decisions to the original decision-making body for a final review. In the event that an agency does remand the decision to the original decision-making body, the Department believes it is important to require that the final decision issued by that body be consistent with the recommendations of the appeals panel.

However, an appeals panel maintains the option to amend an adverse action, which could involve reaching a different conclusion.

When the agency's appeals panel decides to remand the adverse action to the original decision-making body, the appeals panel must provide the institution or program with an explanation for any determination that differs from that of the original decision-making body. In the event that the decision is remanded, any decision issued by the original decision-making body must act in a manner consistent with the appeals panel's decisions or instructions.

These changes will ensure that institutions or programs receive full information regarding the decisions pertaining to their accreditation status, and that decisions remanded back to the original decision-making body reflect the appeals panel's decision or recommendation. Additionally, the changes will provide that the original decision-making body speaks for the agency in addressing concerns raised in a remand.

Changes: None.

Notification of Accrediting Decisions (§ 602.26)

Comments: Several commenters agreed with the proposal in § 602.26(b) to reduce the amount of time within which an accrediting agency must notify State agencies and the Department regarding any adverse action taken against an institution so that these entities are notified at the same time as the institution. One commenter asked for clarification of the "same time" language to ensure that accrediting

agencies adhere to the spirit and intent of the provision.

Discussion: We appreciate the commenters' support of the reduced time to notify State agencies and the Department and note that the term "at the same time" would generally mean within one business day and is consistent with current regulations.

Changes: None.

Comments: Several commenters agreed with requiring an institution to disclose adverse actions to current and prospective students within seven days. However, one commenter noted that disclosures that are hidden, inaccurate, confusing, or misleading fail to provide students with the information they need to make informed decisions. The commenter urged the Department to take steps to ensure that disclosures required under these regulations provide actual, effective notice and information that is accurate, meaningful, and actionable to students who may be unfamiliar with the accreditation system and the meaning of accreditation decisions and terminology. The commenter also urged the Department to ensure that the disclosures continue for the duration of the suspension or other adverse action so that the disclosures are more likely to reach all relevant students and prospective students.

Discussion: We appreciate the support and suggestions of the commenters. We believe that providing initial notification within seven days provides transparency and protection to current and prospective students. Institutions are expected to maintain that disclosure until the suspension or adverse action is resolved. Beyond the Department's regulations, individual agencies often set additional requirements for how and where this information must be disclosed.

The Department's regulations refer to the requirement that the agency must disclose the action taken in a manner that is clear, factual, and timely.

Changes: None.

Comments: One commenter disagreed with the proposed requirement to reduce the amount of time an accrediting agency has available to inform State agencies and the Department when an institution voluntarily withdraws from accreditation or preaccreditation or allows either to lapse from 30 to 10 days. The commenter stated that 10 days is unreasonable and places an unnecessary burden on agencies.

Discussion: We appreciate the commenter's concerns; however, we believe that decreasing the notification timeframe to 10 days provides needed

protections to students and taxpayers. The prompt notification of these changes is of critical importance to entities responsible for ensuring an institution's authority to operate or, in the case of the Department, to ensure that the institution continues to be able to participate in title IV programs.

Changes: None.

Other Information an Agency Must Provide the Department (§ 602.27)

Comments: One commenter disagreed with the proposed elimination of the requirement that an accrediting agency provide to the Department any annual report that it produces as well as the change to require an accrediting agency to consider any contact with the Department as confidential only where the Department determines a compelling need for confidentiality. The commenter stated that these changes lack a reasoned basis. Another commenter agreed with the Department making the determination regarding confidentiality as it would allow the Department to determine the appropriate classification under Federal law.

Discussion: The Department has created monitoring tools that provide it with more real-time data and information to evaluate an agency. By the time an agency publishes an annual report, the data is often stale and unhelpful to the Department. We believe that eliminating the requirement to provide an annual report does not affect the Department's ability to monitor agencies and will increase efficiency and reduce administrative burden.

Changes: None.

Severability (§ 602.29)

Comments: None.

Discussion: We have added § 602.29 to clarify that if a court holds any part of the regulations for part 602, subpart B invalid, whether an individual section or language within a section, the remainder would still be in effect. We believe that each of the provisions discussed in this preamble serve one or more important, related, but distinct, purposes. Each provision provides a distinct value to the Department, the public, taxpayers, the Federal government, and institutions separate from, and in addition to, the value provided by the other provisions.

Changes: We have added § 602.29 to make clear that the regulations are designed to operate independently of each other and to convey the Department's intent that the potential invalidity of one provision should not affect the remainder of the provisions.

Activities Covered by Recognition Procedures (§ 602.30)

Comments: One commenter objected to the Department's proposal to eliminate this provision. The commenter argued that, although the Department stated that the provisions in the current regulations in this section duplicate other regulatory provisions, we have failed to identify which sections in part 602 cover these activities. The commenter asserted that this is because these sections do not exist.

Discussion: The recognition activities procedures that we removed in § 602.30 duplicate provisions in §§ 602.31(a), 602.31(b), 602.31(c), 602.19(e), and 602.33. The sections are referenced within § 602.30 in the current regulations and are contained within these regulations at the same cited locations.

Changes: None.

Agency Submissions to the Department (§ 602.31)

Comments: Several commenters disagreed with proposed changes to § 602.31(a)(2). One commenter stated that the Department's proposal to eliminate a requirement that accrediting agencies submit not only documentation of compliance with the recognition criteria, but also evidence that the agency "effectively applies those criteria" conflicts with the statute as it requires that the Secretary limit, suspend, terminate, or require an agency to come into compliance if she determines that an accrediting agency or association has failed to effectively apply the criteria. Another commenter noted that this is a fundamental part of the application process.

Discussion: The changes to § 602.31(a)(2) continue to require the agency to provide documentation as evidence that the agency complies with the criteria for recognition listed in subpart B of this part, including a copy of its policies and procedures manual and its accreditation standards. The Department staff will analyze the information submitted, in accordance with the procedures described in § 602.32, which include the current requirement to assess observations from site visits to gauge the efficacy of the agency's application of the criteria, rather than a simple attestation of that fact in the documentation submitted by the agency. In keeping with the statutory requirement, if the Secretary determines that an accrediting agency or association has failed to effectively apply the criteria in this section, or is otherwise not in compliance with the

requirements of this section, the Secretary will limit, suspend, or terminate the Department's recognition, or require an agency to come into compliance.

The regulations also recognize that, in some instances, an agency may not have the need to apply a particular policy, standard, or procedure during its recognition review period. In such instances, the agency should not be found to be noncompliant if it has the appropriate policy in place but has not yet had the need to implement it. For example, if no institution during the five-year review period has appealed a negative decision, the agency cannot prove that it follows its appeal procedures, but this does not indicate that the agency is noncompliant. However, if the agency has had occasion to implement a given policy, it must do so effectively.

Changes: None.

Comments: Commenters agreed that accrediting agencies should redact submissions of personally identifiable information (PII) and other sensitive information to prevent public disclosure of PII while facilitating access to documentation. One commenter stated that the Department should better identify what it means by PII before it requires agencies to perform the redaction.

Discussion: We thank the commenters for their support on this proposed change. We believe that those who work with "personally identifiable information" generally understand what it includes, which is any data that could potentially identify a specific individual.

PII is defined in 2 CFR 200.79 as information that can be used to distinguish or trace an individual's identity, either alone or when combined with other personal or identifying information that is linked or linkable to a specific individual. Some information that is considered to be PII is available in public sources such as telephone books, public websites, and university listings. This type of information is considered to be Public PII and includes, for example, first and last name, address, work telephone number, email address, home telephone number, and general educational credentials. The definition of PII is not anchored to any single category of information or technology. Rather, it requires a case-by-case assessment of the specific risk that an individual can be identified. Non-PII can become PII whenever additional information is made publicly available, in any medium and from any source, that, when combined with other available information, could be used to

identify an individual. We do not believe that we need to further define PII.

Changes: None.

Comments: Another commenter stated that changing the timeframe to reapply for recognition to 24 months prior to the date on which the current recognition expires is unreasonable noting that in 24 months the information provided may be out of date. The commenter contended that the reason for the change likely has to do with understaffing at the Department.

Discussion: The Department disagrees with the commenter. To the contrary, the 24-month timeframe provides ample opportunity for an agency, if found deficient in its policies and procedures, to update them as necessary to meet the Department's requirements. It also affords Department staff the opportunity to follow an individual accreditation decision from beginning to end, meaning that staff can observe both the site visit and the final agency decision for a single institution.

The current timeframe makes it impossible for staff to observe the decision-making body considering the same institution for which the staff observed a site visit. Agencies will be able to provide the Department with information if updates occur during the 24-month period. Presently, there is no stated timeframe in the regulations, and providing 24 months allows the Department to perform a more thorough review of the agency and its activities. It also provides the agency sufficient time to make corrections to policies and procedures in order to come into compliance.

Changes: None.

Comments: One commenter noted that the Department proposes moving aspects of the recognition process to an on-site review, but it provides no explanation of how it will ensure adequate maintenance of records. The commenter asserted that this lack of records, which will impede NACIQI in its ability to review the record for its decision and shield the Department from accountability, violates the law.

Discussion: We appreciate the commenter's concerns. Department staff will document the on-site review, including a description of documents reviewed, an explanation of how those documents support the staff finding, and in the event of a negative finding, will require staff to make copies or upload a sample of documents that provide evidence to support a staff finding or recommendation. This will be included in the agency review and will be provided to NACIQI for their review of the agency.

The Department proposed this change in methodology in response to recommendations made by the Office of the Inspector General (OIG or IG) in its June 27, 2018 report, *U.S. Department of Education's Recognition and Oversight of Accrediting Agencies*.²⁶ The OIG report expressed concern that agencies are able to provide examples of their best work in deciding on their own which documents to include as evidence in their petition for recognition or renewal of recognition. Instead, OIG recommended a representative sample of documents that accurately reflect a complete picture of the agency's work. Moreover, the IG expressed concern that staff do not review an appropriate number of institutional or programmatic decisions relative to the number of institutions or programs the agency accredits.

The IG recommended that the accreditation group use risk-based procedures and readily available information to identify the specific institutions and an appropriate number of institutions that each agency must use as evidence to demonstrate that it had effective mechanisms for evaluating an institution's compliance with accreditation standards before reaching an accreditation decision.

The IG further recommended that the OPE accreditation group adopt written policies and procedures for evaluating agency recognition petitions that incorporate the elements of the recommendation described above and address specific documentation requirements to include each selected school's complete self-study report and the agency's site visit report and decision letter; and adopt a risk-based methodology, using readily available information, to identify high-risk agencies and prioritize its oversight of those agencies during the recognition period. These regulations and the June 2019 update to the Accreditation Handbook achieve these objectives.

The Department is concerned that already petitions include tens of thousands of pages and adding to the size of petitions creates a number of practical challenges including demands of agency and staff time. As a result, the Department has determined that by receiving lists of upcoming accreditation decisions 24 months in advance of the recognition decision, staff will have more opportunities to participate in site visits or observe agency decisions regarding institutions that have demonstrated risk characteristics. In addition, by

performing an on-site review, staff can review sections or excerpts of more documents, meaning that their review will include consideration of a larger number of member institution or program files.

Changes: None.

Procedures for Department Review of Applications for Recognition or for Change of Scope, Compliance Reports, and Increases in Enrollment (§ 602.32)

Comments: Commenters stated that the Department should continue its practice of having career staff provide a draft report to agencies it reviews because the Department provides no reason to eliminate the practice.

Discussion: The regulations provide that, if an agency is required to be reviewed by the NACIQI under § 602.19(e), the Department will follow the process outlined in § 602.32(a) through (h) which includes a provision for a draft report to the agency. However, the regulations do not require staff to make a preliminary recommendation regarding an agency's recognition status at the time of issuing a draft report. Only after considering the agency's response to the draft staff report, including additional evidence provided by the agency, and performing its on-site review(s) should staff make a recommendation regarding an agency's recognition status.

Changes: None.

Comments: One commenter stated that under proposed § 602.32(b), the Department would only require that an accrediting agency provide letters from educators and institutions to show wide acceptance of the agency. However, the commenter suggested that both of those parties may have a conflict of interest in providing acceptance of the agency if they are an institution or work for an institution that is accredited by the agency. Further, the commenter stated that the requirement to show wide acceptance was not only applicable to initial approval, but also re-recognition. The commenter suggested that letters should not be used if all three come from the same institution and that the Department should justify why this provision should not apply to continued recognition.

Discussion: We appreciate the comments on this topic; however, once an agency has been recognized, the fact that it has member institutions serves as evidence that the agency is valued by institutions and educators. It is important to request support from educators and institutions during the review of an application for initial recognition since the Department needs to be sure that the agency is likely to

maintain a healthy membership and is not being created for the purpose of accrediting a single institution. We believe the original widely accepted standard in § 602.13 was too subjective and was unclear about how many letters would be required to meet the standard. In some instances, agencies submitted multiple documents in support of their wide acceptance, yet staff found the agency to be out of compliance. In addition, this requirement could be used strategically by educators, licensing boards, and other agencies to block competition either among institutions or within the labor pool by narrowing available opportunities or the number of individuals who qualify for them. It is also possible that an agency that accredits a small number of programs or institutions could be a reliable authority on institutional quality, but because of the narrow scope of its work, lacks wide acceptance outside of the institutions for which it provides accreditation due to a lack of knowledge about the area by others, or due to philosophical differences in approach. The proposed change would streamline the current wide acceptance requirement while keeping guardrails for the initial recognition of an agency by ensuring they can demonstrate acceptance from the constituencies most relevant to them. The Department expects that letters of support reflect the wide variety of constituencies the agency serves but does not believe one-size-fits-all regulatory requirements align with statutory authority, nor would they improve accrediting agency quality. The Department believes this requirement is most appropriate during initial recognition because it helps validate that there is a need for a newly recognized agency.

Changes: None.

Comments: One commenter stated that the current § 602.32(d) specifies that final judgments on the merits by a court or administrative agency in complaints or legal actions against an accrediting agency are determinative of compliance. The commenter stated that the proposal to merely consider such final judgments is a significant change to the Department's procedures, and that the Department's explanation that the proposed change reflected the view of the Department and several committee members did not provide a justification that meets the burden of the APA.

Discussion: Current § 602.32(d) specifies that "Department staff's evaluation of an agency may also include a review of information directly related to institutions or programs accredited or preaccredited by the

²⁶ www2.ed.gov/about/offices/list/oig/auditreports/fy2018/a09r0003.pdf.

agency relative to their compliance with the agency's standards, the effectiveness of the standards, and the agency's application of those standards." The proposed change in this section does not substantively change this requirement. Moreover, there is no mention of the results of a final judgment on the merits by a court or administrative agency anywhere in the current regulations in part 602. The language referenced in the new regulations at § 602.32(d)(2) states that complaints or legal actions against an accredited or preaccredited institution or programs accredited or preaccredited by the agency may be considered but are not necessarily determinative of compliance. This change was necessary to ensure that institutions and agencies have due process rights and benefit from the presumption of innocence such that allegations alone do not suffice as evidence of noncompliance.

Changes: None.

Comments: One commenter requested that the Department clarify what is meant, in § 602.32(e), by the statement: "that the agency was part of a concerted effort to unnecessarily restrict the qualifications necessary for a student to sit for a licensure or certification examination or otherwise be eligible for entry into a profession." Another stated that the Department provided no evidence that unnecessary qualifications are being imposed on students to sit for licensure or for certification and that the Department is trying to link the changes in § 602.32(e) and (k) in order to prevent accrediting agencies from working with licensing bodies and States to prohibit discrimination.

Discussion: The purpose of the change is to limit symbiotic relationships between accrediting agencies, institutions, and licensing boards, which together may limit access to professions by increasing education requirements without regard for consumer cost to the benefit of agencies, institutions, and licensing boards.

The Department views such behavior as anticompetitive and contrary to the spirit, if not letter, of the "separate and independent" provisions in HEA section 496 as well as to basic fairness and the goals of the HEA, namely, to expand opportunity to Americans.

In other instances, accrediting agencies may have formed such a close relationship with licensing boards that there is no opportunity for a new agency to form. Licensing boards may require individuals to have graduated from an institution approved by a specific accrediting agency to qualify for licensure. As a result, institutions—who want their graduates to obtain

licensure—would not choose an agency who could not fulfill that licensure obligation. It may be difficult to sanction an agency that is the only agency providing the programmatic accreditation necessary for a graduate's entry into the workforce. Again, the Department places far greater importance on the acquisition of knowledge and skills than on how such knowledge and skills were acquired.

Changes: None.

Comments: One commenter stated that the Department failed to give an example, in connection with proposed § 602.32(e), of how an accrediting agency deprived a faith-based institution of accreditation because of its religious mission. The commenter stated that proposed § 602.32(e) would allow faith-based institutions to have their own accrediting agency, questioned what quality controls would exist for such an agency, and asserted that faith-based institutions should be required to adhere to the same academic standards as secular schools. Another commenter stated that the proposed regulations were not clear as to when an institution could make a complaint to the Department that its mission had been a negative factor in an accrediting agency's decision which could lead to confusion for accrediting agencies.

Discussion: We believe the commenters may have intended to refer to § 602.18(b)(3) rather than § 602.32(e). Although the Department does not have evidence that faith-based institutions have been deprived of accreditation because of their religious missions, we have seen instances in which agencies have proposed changes to their standards that would have prevented those institutions from following the tenets of their faith. Faith-based institutions were successful in blocking those changes, but if the accrediting agency had not been responsive to the requests of its faith-based members, the change could have interfered with the mission of a number of faith-based institutions.

The Free Exercise clause of the Constitution requires the Department to ensure that faith-based institutions are not deprived of access to Federal programs because of the exercise of their religious rights. A number of faith-based institutions have expressed concern to the Department that, while accreditation has ultimately been granted, some agencies have used accreditation to force institutions to implement policies and practices that may align with popular opinion, but may not be consistent with the tenets of their faith. Likewise, RFRA requires that the Federal government not substantially

burden religious exercise unless it is the least restrictive means of furthering a compelling government interest. We are taking proactive steps to ensure that discrimination does not occur against faith-based institutions because of their religious exercise. Agencies that accredit faith-based institutions must meet the same standards to obtain recognition from the Secretary that are applicable to all accrediting agencies seeking the Secretary's recognition. All institutions have access to an existing complaint process that provides an opportunity for institutions to raise their concerns, including concerns about respect for their missions, to the Department. These regulations do not change the existing complaint process.

Change: None.

Comments: One commenter stated that, because the regulations do not specify how many or which criteria the accrediting agency must meet to be substantially compliant, the proposed regulations may allow an agency to be out of compliance with multiple criteria and still be a gatekeeper for Federal aid. Two commenters agreed with allowing an agency to continue to be recognized if it was in "substantial compliance" because it would allow an agency a four-year grace period to resolve any regulatory lapse, and, as one commenter noted, the language also ensures the unfettered ability of Department staff to re-escalate an issue, should it prove more serious than initially determined. The commenter also noted that the Department would only use the designation in cases where an agency achieved compliance in all but a technical sense.

Discussion: The Department disagrees with the commenter who stated that the "substantial compliance" standard would allow a noncompliant agency to continue to be recognized. An agency that is out of compliance would not be found to be substantially compliant. However, in some instances an agency may have been acting in accordance with the Department's requirements but may have a written policy that does not clearly articulate every aspect of the agency's policies or procedures. In other instances, the agency may have the correct policy in place and mostly acted in accordance with the policy but may be found to have a limited number of instances when special circumstances or employee error resulted in the agency deviating from its written policy. In other instances, a missing signature or the use of language that is not precisely the same as the language in the Department's regulations could result in a finding of noncompliance although

the agency's actions meet the Department's requirements.

As one commenter noted, the proposed language regarding the use of monitoring reports for agencies that are substantially compliant relates to situations where there were technical compliance issues, but the agencies were meeting the spirit of the requirements. Section 602.3 makes clear that a monitoring report is required to be submitted by an agency to Department staff when the agency is found to be substantially compliant but needs to make a minor correction to its policies or practices. The report must contain documentation to demonstrate that the agency is implementing its current or corrected policies, or that the agency, which is compliant in practice, has updated its policies to align with those compliant practices.

Changes: We have made no changes as a result of this comment. However, we have modified § 602.32 by condensing paragraphs (j) through (m), removing redundant language, including removing proposed § 602.32(k), which was identical to proposed § 602.32(e), and clarifying the process Department staff follow in their review of applications for recognition or for change of scope, compliance reports, and increases in enrollment.

Procedures for Review of Agencies During the Period of Recognition (§ 602.33)

Comments: Several commentators stated that the proposed rules regarding the application process would make it more difficult for the Department to remove ineffective accrediting agencies that serve as gatekeepers for title IV aid. One commenter stated that the concept of a monitoring report for accrediting agencies that are "substantially in compliance" rather than fully meeting all requirements was a broad term that had no basis in statute. The commenter stated that the process would allow Department staff to make decisions without full transparency and public accountability versus a "typical full agency review."

Discussion: The Department's intention in introducing the monitoring report is to enable accrediting agencies to more effectively resolve instances of minor exceptions to full compliance. Furthermore, we believe that the use of monitoring reports will increase the likelihood of identifying and correcting minor problems before they become larger problems.

An accrediting agency that is failing to meet the Department's criteria for recognition remains subject to withdrawal of recognition. The

Department has not yielded its authority or forfeited its responsibility for assuring that accrediting agencies are qualified gatekeepers of title IV aid. While the statute does not specify "substantial compliance" as a status for accrediting agency recognition, it does not preclude the Secretary from making this designation and for many years substantial compliance was the standard used by the Department during recognition reviews. The introduction of the monitoring report and designation of substantial compliance provides the Department with more efficient and effective tools and methods to address minor deviations in process or procedures to ensure full compliance. It is also important to note that the monitoring report increases the level of transparency for recognition or accreditation decisions as it provides evidence that any minor omissions or inconsistencies are resolved, and that policies and procedures are put in place to prevent future inconsistencies. The monitoring report will be employed in situations where the accrediting agency is substantially compliant and requires only minor actions or sufficient time to come into full compliance.

Changes: None.

Comments: Regarding proposed changes to § 602.33(c), one commenter stated that an on-site "spot check" of records during a visit may not be sufficient to understand an agency's full body of work during a review period. The commenter also noted that the Department must also have sufficient staff to handle the workload should these rule changes increase the number of agencies that need to be reviewed and monitored. The commenter supported the provisions that require the Department, for issues that cannot be resolved by Department staff, to seek public comment, make a recommendation to NACIQI, and, ultimately, refer the issue for Secretarial action; however, the commenter felt that the Department's decision to continue or not continue monitoring should also be public. One commenter stated that the Department should do more to monitor competition between accrediting agencies.

Discussion: We disagree that the provisions of § 602.33(c) constitute a "spot check." The regulations will require the Department staff to conduct a thorough review and analysis of identified areas of concern or inconsistency. The on-site review is designed to increase the quality and scope of documents staff review, based on institutions or actions selected by staff, while reducing the burden of uploading thousands of pages of

documents that may not be responsive to staff's specific concerns or questions. We appreciate the commenter's support for the provisions that require escalation of unresolved issues to NACIQI and believe that this process affords sufficient and appropriate transparency to the public. In response to the commenter who believed the Department should make its decision regarding the continuation of monitoring public, we reiterate that we will use the monitoring report for minor omissions or inconsistencies that we do not believe are cause for public concern.

The Department seeks to acknowledge and correct even small deviations from standard practice to ensure that they are resolved before becoming larger problems, while at the same time not creating unnecessary work for the agency or taking time from a NACIQI meeting that would be better spent focusing on agencies with more serious compliance concerns.

With regard to the commenter's concern that these regulations will reduce the stringency of the Department's oversight, we believe instead that these new regulations provide greater opportunities for the Department to take necessary action against an accrediting agency. For example, when institutions were limited to selecting an agency based on their location, and entire regions of the country were accredited by a single accrediting agency, the Department would have been reluctant to withdraw recognition from a regional accrediting agency, leaving an entire region of the country without a comprehensive institutional accrediting agency. The Department believes there is always a small risk that some agencies may feel pressured to lower standards in order to attract more member institutions. However, the Department does not believe this risk will grow as a result of these regulations and, as always, will be vigilant in monitoring agencies that insufficiently monitor the quality of the institutions and programs they oversee. The Department believes that by reducing unnecessary administrative burden from the recognition process, accrediting agencies can devote more time and resources to their primary responsibility of overseeing institutional quality and the student experience.

The Department will perform risk-based analysis and review of agencies, including between official renewal of recognition activities, when we detect signs of risk through our various monitoring and program review activities. Through these revised processes, the Department believes it will be able to more effectively identify

and act against agencies that may be at risk of reducing rigor and causing harm to students and taxpayers.

Changes: None.

Comments: One commenter stated that the Department proposes eliminating a requirement that it review an agency at any time at the request of the NACIQI and that it does not mention this change in the NPRM. The commenter stated that the Department provides no reasoning or justification and appears not to have discussed this change during the rulemaking. The commenter stated that it is particularly problematic given the proposal to conduct monitoring reports without input or review from NACIQI.

Discussion: The regulations do not eliminate an investigation at the request of NACIQI. This requirement is addressed in § 602.33(a)(2), which requires Department staff to act on information that appears credible and raises concerns relevant to the criteria for recognition. Thus, if NACIQI were to make a credible request, based on evidence of risk, the Department staff would act on this request and initiate a review or investigation.

Changes: None.

Senior Department Official's (SDO's) Decision (§ 602.36)

Comments: A few commenters opposed the additions to the types of decisions the SDO may make in § 602.36(e), such as approving agencies for recognition and approving recognition with a monitoring report. These commenters feared the change would impede the Department's ability to perform an appropriate oversight function over accrediting agencies. Additionally, these commenters believed this change would conceal important monitoring of agencies not only from NACIQI, but also from the public. These commenters requested that the Department abandon these changes and fully review and evaluate accrediting agency performance.

Discussion: The Department believes that creating required monitoring reports provides an additional tool to ensure accrediting agency compliance with recognition criteria. Under the current regulations, when the Department identifies minor omissions or inconsistencies in an agency's standards, policies, or procedures, the Department may not take action because the required action would be unjustifiably severe. On the other hand, the Department has sometimes determined a seasoned accrediting agency to be noncompliant because a single form was left unsigned or changes in board membership temporarily

change the ratio of board participants. By adding the substantial compliance determination and a required monitoring report, the Department has the opportunity to award continuing recognition and continue to address minor irregularities or omissions. We will restrict the use of the monitoring report to instances when an agency has demonstrated substantial compliance and limit its use to low-risk situations. The monitoring report, for example, could include documentation to show that an agency has updated its written policies and procedures to align with its current practice, to ensure that controls have been put in place to make sure that all documents are properly signed, or to demonstrate that minor deviations that were made in order to accommodate students in unusual circumstances have not become standard practice.

The decisions of the SDO are predicated on demonstrated compliance or substantial compliance with the criteria for recognition listed in subpart B of this part. Those decisions do include a wide range of determinations including, but not limited to, approving for recognition; approving with a monitoring report; denying, limiting, suspending, or terminating recognition; granting or denying an application for an expansion of scope; revising or affirming the scope of the agency; or continuing recognition pending submission and review of a compliance report. These decisions are based on the SDO's assessment of the agency's petition for recognition, Accreditation Group staff analysis and agency response, and the NACIQI review.

Changes: None.

Comments: A few commenters also criticized the changes in § 602.36(e) and (f) that allow the SDO to determine that an agency is compliant or substantially compliant. These commenters expressed concern that a determination of substantial compliance represents a weakening of protections or the allowance of agency inaction.

A few commenters specifically disagreed with the change in § 602.36(e)(1)(i) allowing the SDO to determine that the agency has demonstrated compliance with a standard when an agency has required policies and procedures in place but has not had an opportunity to apply them. These commenters believed that this change violates the HEA, which they claimed requires the Department to act within 12 months or remove the agency's recognition if it does not comply or effectively apply required criteria. One commenter suggested that agencies could continually create new standards to avoid a Department finding

for failure to follow their standards. Two commenters suggested that the Department withdraw this change.

Discussion: We disagree with the commenters who argued against allowing the SDO to determine an agency to be compliant or substantially compliant. The provision still requires that the SDO make a compliance determination. We do not believe that this weakens the standard. Instead, we believe it allows the SDO to raise concerns about even small irregularities or omissions, and require the agency to resolve them, while at the same time allowing NACIQI to focus their time on agencies with clear areas of noncompliance.

We also disagree with the commenters who opposed allowing the SDO to determine that an agency demonstrated compliance when the agency had the required policies and procedures in place but had not had the opportunity to apply them. We do not believe it is appropriate to penalize an accrediting agency that has the appropriate policies in place but has not had the need or opportunity to apply those policies during the review period. For example, a small accrediting agency may have policies in place to evaluate an expansion of scope at a member institution to include distance learning, but it may have no members that participate in distance learning or that add distance learning during the review period. Similarly, an agency may have a change-of-control policy in place, but it may not have had an institution that requested consideration of a change-of-control during the review period, and the agency would have had no need to implement the policy. Accrediting agencies with a small number of members may have few or even no institutions that go through an initial accreditation or renewal of accreditation review during the agency's five-year recognition review period since agencies typically accredit institutions every 10 years.

The Department believes that this is consistent with statute, which requires an agency to have accredited or preaccredited only one institution prior to being eligible for recognition. It is unlikely that an accrediting agency would be required to implement all of its policies in the course of accrediting or preaccrediting a single institution, which makes it clear that Congress did not expect that each agency would be required to implement every policy during each review cycle. This is not a change in policy because staff have considered these instances to meet the standard for compliance; however, the

Department seeks to codify this practice in these regulations.

To be clear, this policy does not ignore instances when an agency elected to ignore a problem and not implement its written policies, but instead takes into account that agencies may not need to exercise every one of its policies during a five-year review period, and that is not a violation of the requirements of the HEA. In such a case, the Department will review the policies and procedures in place to be sure they comply with the Department's requirements. In addition, as soon as the need to apply that policy arises, the agency will be required to notify the Department so that the Department has the opportunity to conduct an evaluation of the agency's application of the policy. The agency has not failed to comply if it has not had the need or opportunity to apply a particular policy, as long as it has a policy in place and implements it properly if and when the need arises.

Changes: None.

Severability (§ 602.39)

Comments: None.

Discussion: We have added § 602.39 to make clear that, if any part of the regulations for part 602, subpart C, whether an individual section or language within a section, is held invalid by a court, the remainder would still be in effect. We believe that each of the provisions discussed in this preamble serve one or more important, related, but distinct, purposes. Each provision provides a distinct value to the Department, the public, taxpayers, the Federal government, and institutions separate from, and in addition to, the value provided by the other provisions.

Changes: We have added § 602.39 to make clear that the regulations are designed to operate independently of each other and to convey the Department's intent that the potential invalidity of one provision should not affect the remainder of the provisions.

Secretary's Recognition Procedures for State Agencies

Criteria for State Agencies (§ 603.24)

Comments: One commenter supported the Department's removal of the requirement for State agencies that function as accrediting agencies to review and evaluate institutions' credit hour policies. This commenter agreed with the Department that the requirement adds burden without evidence of increased accountability, benefit to taxpayers, or assistance to students.

Discussion: We thank the commenter for the support of the removal of this provision. We believe that it is beneficial to reduce burden when it does not jeopardize accountability.

Changes: None.

Comments: One commenter challenged the Department's assertion that the requirements were "overly prescriptive" and did not agree that State agencies functioning as accrediting agencies needed fewer restrictions in this area.

Discussion: The Department maintains its position that the requirements in § 603.24(c) to review policies related to credit hours are overly prescriptive and that the State agency serving as an accrediting agency should have autonomy and flexibility to work with institutions in developing and applying credit-hour policies. This change does not, as some commenters suggested, remove all oversight of institutions in this area (see the discussion above related to § 602.24). Instead, it provides for more flexibility and treats State agencies that serve as accrediting agencies the same as other agencies.

Changes: None.

Severability (§ 603.25)

Comments: None.

Discussion: We have added § 603.25 to clarify that if a court holds any part of the regulations for part 603, subpart B, invalid, whether an individual section or language within a section, the remainder would still be in effect. We believe that each of the provisions discussed in this preamble serve one or more important, related, but distinct, purposes. Each provision provides a distinct value to the Department, the public, taxpayers, the Federal government, and institutions separate from, and in addition to, the value provided by the other provisions.

Changes: We have added § 603.25 to make clear that the regulations are designed to operate independently of each other and to convey the Department's intent that the potential invalidity of one provision should not affect the remainder of the provisions.

Standards for Participation in the Title IV, HEA Programs

End of an Institution's Participation (§ 668.26)

Comments: Several commenters supported allowing institutions to award and disburse title IV aid for up to 120 days following the end of an institution's eligibility. These commenters noted that this would allow more students to complete their

academic programs at the institution they selected without the disruption involved in relocating to another institution. One commenter also expressed that this change benefits closing institutions by providing continuity and strong operations through a closure.

Discussion: We thank the commenters who supported the provision allowing a school to allow students an opportunity to complete their academic program at their chosen institution if they can do so within 120 days. This minimizes disruption and allows for greater flexibility for students and for institutions—especially those who planned an orderly closure.

The Department realized that, as written, § 668.26(e)(1) could be read by some to permit an institution that no longer participates in title IV programs to continue receiving title IV aid. Instead, the Department's intent was a desire to enable the Secretary to allow an institution to continue participating in title IV programs for up to 120 days after a State, an accrediting agency, or the Department has made the decision to remove State authorization, accreditation, or title IV participation, but defers the effective date of that decision.

Comments: One commenter generally supported this provision but also expressed concern that the Department would not allow for more than 120 days of funding following the decision to end an institution's participation. This commenter suggested alternative language that outlined parameters for which an institution would retain funding. These suggestions included disbursing only to students who were already enrolled when the institution announced its closure, disbursing only to students who had already completed at least 50 percent of the academic program, allowing disbursements only for institutions that were voluntarily withdrawing from participation in the title IV programs, and requiring the accrediting agency to approve the teach-out. These conditions, in the commenter's opinion, provided for what the commenter believed was the Department's intent—allowing for students to receive funding during an orderly closure of an institution.

Discussion: We appreciate the support from the commenter and note that we have revised § 668.26 to more clearly articulate the need for the State authorizing agency, accrediting agency, and Department to all agree that the institution has the capacity to conduct an orderly teach-out based on the teach-out plan provided by the institution. We note that we had addressed most of the

concerns expressed in the NPRM; however, we agree that additional assurances by each member of the triad are needed to provide an appropriate teach-out opportunity to students. To reiterate, in our proposal, we imposed numerous requirements on institutions that wish to avail themselves of the flexibility afforded by this provision. Most importantly, the Secretary may permit the institution to continue to originate, award, or disburse title IV, HEA program funds following a State authorizing agency or accrediting agency's decision to withdraw, suspend, or terminate State authorization or accreditation in circumstances when such a decision has a deferred effective date, and only if the State authorizing agency and accrediting agency agree that the cause of the probation or termination decision would not prevent the institution from engaging in an orderly teach-out. Note, however, that this is permissible only in certain circumstances and only with agreement from an institution's State authorizing agency and accrediting agency. In addition, the permission to originate, award, or disburse funds may not extend beyond the delayed effective date of the withdrawal, suspension, or termination decision, or 120 days following that decision, whichever is earlier.

We require the institution to notify the Secretary of its plans to conduct an orderly closure and teach-out in accordance with accrediting agency requirements. Additionally, we compel the institution to continue to follow the terms and conditions of the program participation agreement.

Finally, we limited the disbursements to enrolled students who could complete the program within the 120 days following the date of a final, non-appealable decision by State authorizing agency to remove State authorization, an accrediting agency to withdraw, suspend, or terminate accreditation, or the Secretary to end the institution's participation in title IV, HEA programs. Students would also be able to transfer to a new institution. To further protect both students and taxpayers, the Secretary together with the institution's State authorizing agency and accrediting agency must determine that with continuing title IV resources the institution is able to carry out a teach-out, and that the cause for the withdrawal, termination, or suspension of State authorization or accreditation would not prevent the institution from conducting a high-quality teach-out. For example, an accrediting agency could make the decision to withdraw accreditation because an institution

does not meet the agency's requirements for long-term financial viability; however, the institution may still have sufficient resources if title IV participation continues to provide a teach-out that meets the requirements of the approved teach-out plan.

We did not limit the provision to those who voluntarily withdrew from participation in the title IV programs. We believe that in those instances institutions are already permitted to continue to participate in title IV programs until the end of the approved teach-out plan or until such time that the institution is no longer providing a teach-out opportunity that meets the requirements of the teach-out plan.

We agree that it is important for the State authorizing agency and the accrediting agency, not the institution itself, to determine regulatory requirements. We believe this adds additional assurances that the commenter thought were important.

We do not agree with the commenter who believed that we need to provide for additional time beyond the 120 days after a decision to end participation in the title IV programs. We note that an institution executing an orderly closure has not ended its participation in the title IV programs by announcing a future closure. As an example, if an institution announces in July that it will operate for one more academic year and close at the end of its spring semester (which ends the following May), the institution continues to participate in the title IV programs and continues to receive title IV funds without the possible extension that may be available under this provision.

Changes: The Department has added language to clarify that, in the event that the State authorizing agency or accrediting agency has made the decision to withdraw, suspend, or terminate accreditation or authorization, the Secretary may consider granting the institution the 120-day teach-out opportunity only if the institution's State authorizing agency and accrediting agency agree that the cause for that negative action would not prevent the institution from conducting an orderly teach-out.

Comments: Several other commenters opposed the Department providing title IV funds to students to allow them to complete a teach out for up to 120 days after a decision to end an institution's title IV eligibility. These commenters expressed serious concern about loosening standards for schools, expecting taxpayers to spend additional money to fund them, and preventing students from obtaining closed school discharges.

Discussion: We disagree with the commenters who believe that the goal of this provision is to avoid closed school discharges. The Department reiterates that the Secretary may—but is not required to—allow the use of this option in the event that the State authorizing agency makes the decision to end authorization, or the accrediting agency makes the decision to terminate, suspend, or withdraw accreditation, or the Department makes the decision to end the institution's title IV participation, but only with the agreement of the State authorizing agency and the institution's accrediting agency. This maximum 120-day extension of participation would be provided only when the institution demonstrates the capacity to administer title IV funds appropriately and provide a high-quality teach-out experience. Additionally, students who meet the closed school discharge requirements, and who did not opt to participate in the teach-out, would still be eligible for a closed school loan discharge as would students who agreed to participate in the teach-out in instances in which the institution does not fulfill the requirements of the teach-out plan and meet the other requirements. A student who elects to participate in a teach-out, and then fails to complete the courses that were part of the student's teach-out agreement due to no fault of the institution, would not be eligible for a closed school loan discharge. The Department will not permit an institution to continue to participate in title IV after a decision has been made by the State authorizing agency, the accrediting agency, or the Department to remove authorization, accreditation, or to end title IV participation, without first confirming with the institution's accrediting agency and State authorizing agency that the institution has the capacity to conduct the 120-day teach-out, and that the reason for the withdrawal, termination, or suspension of State authorization or accreditation does not prevent the institution from completing an orderly teach-out.

Only those students who are enrolled will be able to participate in the teach-out either to complete their program or to transfer to a new institution. The institution would not be permitted to advertise or enroll new students during the 120-day period, in accordance with § 668.26(e)(1)(iii).

Changes: We have revised § 668.26(e)(1) to clarify that the provision for continued participation in title IV, HEA programs, for up to 120 days must precede the point at which the Secretary terminates the institution's program participation agreement; to

clarify that a student may take credits for the purpose of transferring to another institution; and to provide other clarifying and conforming edits.

In addition, we have modified § 668.26(e)(2) to cross-reference the regulations that address misrepresentation to students by the institution regarding the teach-out plan or teach-out agreement.

Severability (§ 668.29)

Comments: None.

Discussion: We have added § 668.29 to clarify that if a court holds any part of the regulations for part 668, subpart B, invalid, whether an individual section or language within a section, the remainder would still be in effect. We believe that each of the provisions discussed in this preamble serve one or more important, related, but distinct, purposes. Each provision provides a distinct value to the Department, the public, taxpayers, the Federal government, and institutions separate from, and in addition to, the value provided by the other provisions.

Changes: We have added § 668.29 to make clear that the regulations are designed to operate independently of each other and to convey the Department's intent that the potential invalidity of one provision should not affect the remainder of the provisions.

Reporting and Disclosure of Information (§ 668.41)

Comments: Multiple commenters opposed the proposed changes to the job placement rate disclosures. Many of those specifically opposed the change that would require an institution to disclose any placement rate it calculates. Those commenters also opposed the elimination of a requirement that institutions identify the source, timeframe, and methodology of the job placement rates they do disclose. One commenter suggested that by changing the requirements, an institution is likely to cherry pick the best calculations to disclose to students. Additionally, that commenter said that Federal funds should not support students in academic programs related to employment requiring licensure if the program does not meet the licensure requirements in a given State. Another commenter who opposed changes to the job placement disclosure requirements stated that placement rates are the most commonly inaccurate or misleading advertisements for academic programs. Another commenter stated that the Department did not justify why an institution is not required to disclose any job placement rate calculated at the

behest of a State authorizer or accrediting agency.

Discussion: The Department does not believe that the changes to the job placement rate disclosures will weaken protections to students. The Department believes that, if an institution uses a job placement rate in its advertising for students, or if an institution's accrediting agency or State requires the calculation of a job placement rate, the institution should be required to disclose those rates publicly. However, the Department agrees with the commenter that job placement rates are subject to inaccuracies and inconsistencies due to the reliance on self-reported data and the myriad methods used to calculate these rates. The Department believes that requiring institutions to disclose any job placement rates they calculate may cause institutions to simply calculate such rates less often or publish rates based on flawed methodologies or surveys that have an insufficient survey response rate. Required disclosure of any calculated job placement rate may yield unintended consequences, including diminishing institutions' willingness to examine ways to improve their program's placement rates or requiring the disclosure of data to students and prospective students that could be incomplete, invalid, or unreliable. The Department believes institutions should have the right to utilize internal data to diagnose and address program weaknesses and that this flexibility will benefit students.

The Department disagrees with the commenter who claims institutions will disclose only positive calculations to students. The Department believes that institutions will work to improve their programs when job placement rates reflect poor results. Improving programs will help students, who will benefit from stronger programs and better job options after completion.

There are other regulations that prohibit misrepresentation in advertising, including any misrepresentation of job placement rates used by an institution in advertisements.

The Department believes that the regulations at § 668.41(d)(5)(ii) that require an institution to identify the source of the information provided in job placement rates is duplicative of the requirement in § 668.41(d)(5)(i) that informs institutions that they may provide this disclosure using the institution's placement rate for any program based on data from State data systems, alumni or student satisfaction surveys, or other relevant sources and, as a result, is unnecessary. The changes

made to this regulation do not prohibit institutions from providing students the calculation method they used to determine their published job placement rates.

The Department also disagrees with the commenter who stated that programs that do not lead to licensure or certification should not be eligible to participate in the title IV programs. Students may wish to enroll in programs with no intention of attaining licensure or certification in that field and should retain the right to do so as long as they are aware of the limitations of the program. The Department also notes that, in § 668.43(a)(14), the regulations require the disclosure of any placement rates calculated and reported to the institution's accrediting agency or State, if the agency or the State requires them.

Changes: None.

Institutional Information (§ 668.43)

Comments: Many commenters encouraged the Department to maintain strong disclosure requirements for institutions to help level the information playing field between students and institutions.

One commenter recommended that the Department require institutions to share all disclosures through "appropriate publications, mailings or electronic media," rather than having disclosures be "readily available." That commenter continued by stating that the Department should develop requirements that preclude institutions from burying disclosures on a website with a lengthy list of other disclosures.

Discussion: The Department thanks those commenters that encouraged the Department to maintain strong disclosure requirements for institutions. The Department continues to believe that providing disclosures on all programs that lead to licensure or certification, regardless of instructional modality, is the best way to ensure that all students are aware of the program's ability to prepare the student to sit for licensure or certification exams or qualify for licensure or certification.

While the Department would applaud any institution that exceeds the requirement for making these required disclosures, the Department remains committed to requiring only that institutions have them "readily available." This is consistent with the statutory requirements for information dissemination activities in HEA section 485(a)(1).

Changes: None.

Comments: Multiple commenters expressed support for a disclosure related to transfer credit policies,

suggesting that this change may encourage institutions to discontinue the practice of awarding transfer credit solely on the source of accreditation or tax status of the sending program or institution. The commenters stated that having credit transfer policy disclosures will provide transparency for students and help to ensure that institutions do not deny students a fair and fulsome evaluation of their earned academic credits.

One commenter recommended that the Department also require this disclosure to be made to part-time students. Another commenter suggested that all accredited institutions' academic credits should be transferable because accredited institutions must meet established standards for course content, quality, and rigor.

Discussion: The Department thanks those commenters who supported the Department's inclusion of a transfer credit disclosure. The Department views this requirement as necessary to ensure transparency to institutional policies related to transfer credits. The Department agrees that part-time students should also receive this disclosure.

The Department does not have the authority to require institutions to accept academic credits earned at an accredited institution because the authority for that determination resides with the institution. The Department of Education Organization Act of 1979 (Pub. L. 96–88) prohibits the Department from dictating such matters.

Changes: None.

Comments: Multiple commenters opposed the inclusion of a transfer credit disclosure, including one commenter who stated that it would be duplicative and unnecessary for an institution to include in its transfer credit policy the disclosure of any types of institutions from which they will not accept credit. One commenter stated that this disclosure would interfere with academic review of credits by faculty members and would result in students receiving a poorer quality education from their programs. Another commenter stated that the disclosure would strip institutions of the autonomy to independently determine the transferability of credit and force institutions to accept credit from institutions that the accepting institution finds to be academically substandard.

Discussion: The Department does not believe it is duplicative to require institutions to list any types of institutions from which the institution will not accept credits when also providing a description of the transfer

credit policies. It is in the best interest of students to receive information about whether their credits will or will not transfer prior to attempting to transfer. Providing transparency to students regarding an institution's transfer credit policies will improve their ability to make informed enrollment decisions. In some cases, these disclosures will reduce the instances of students having to retake coursework or take additional courses after transferring to an institution that will not accept their previously earned credits. This requirement will not interfere with the academic review of a student's transfer courses or result in students who are less prepared academically. The Department is not requiring institutions to adopt a particular policy but is requiring institutions to disclose their policies and practices; it is vitally important for students to know if an institution categorically rejects credits based on the accrediting agency or tax status of other institutions.

This disclosure has no impact on the academic review of credits by faculty members, or the autonomy to independently determine the transferability of credit. Moreover, it does not force institutions to accept credit from institutions that the accepting institution finds to be, as the commenter noted, academically "substandard." The disclosure simply requires institutions to inform prospective students of any institutions or types of institutions from which it will not consider the transferability of earned academic credits.

Comments: Multiple commenters expressed support for the inclusion of a requirement that institutions disclose to students whether their educational programs meet the requirements for licensure across States so that a student will know if their investment in an educational program will lead to the career the student intends to pursue. One commenter stated that this provision would encourage institutions to conduct research regarding whether their programs fulfill requirements for State licensure, and that it is vitally important for students to have as much information on State licensure as they can obtain. Another commenter called this a "common-sense requirement" that will help prospective students from wasting money on programs that will not lead to licensure.

Discussion: The Department thanks those commenters who expressed support for the inclusion of licensure and certification disclosures. The Department continues to encourage institutions to determine if their programs meet licensure requirements

and hopes that these regulations will encourage institutions to conduct such research.

The Department acknowledges, however, that, in some instances, it can be difficult to ascertain the requirements for licensure or certification in certain States, and that States sometimes have conflicting requirements, which means that the institution may not be able to make the determination in every State or develop programs that meet the requirements of all States.

Changes: None.

Comments: Many commenters opposed the Department requiring institutions to disclose if a program meets a State's licensure or certification requirements. One commenter noted that students have as much access to State licensure requirements as institutions do. Another commenter opined that requiring institutions to assess whether a program meets the educational requirements for licensure or certification for employment in an occupation (§ 668.43(a)(5)(v)) should be removed because the disclosure is not required by the HEA and it places an undue burden on institutions.

One commenter who opposed the inclusion of licensure disclosures asserted that many students do not want licensure and to require an institution to disclose this information creates undue burden to them for a reason that is not always the case. The same commenter opined that to obtain information on licensure and certification is difficult because the appropriate agencies do not always respond timely to inquiries. This commenter expressed concern that this disclosure requirement may discourage institutions from offering programs that lead to a career that requires licensure or certification because of the extra work this disclosure requirement would cause.

Another commenter suggested that instead of requiring institutions to determine whether their program meets the requirements for State licensure or certification, the Department should require the States to make it easier to find and follow the State's licensure requirements.

One commenter noted that the Department should reconsider its use of the student's location in determining the correct location for a licensure disclosure because a student may not plan to obtain licensure in the same location that the student is taking their courses. Another commenter requested that the Department go beyond requiring disclosure of whether programs meet State licensure requirements and require that all programs meet State licensure

requirements in all States where the institution offers the program.

One commenter asked whether the Department means to permit an institution to continue to advertise a program based on whether the program would fulfill educational requirements for licensure or certification, but allow the institution to only make a disclosure to students on whether the institution had not made such a determination. The commenter was concerned that this would allow an institution to advertise misleading or inaccurate information about whether a program meets licensure or certification requirements.

One commenter asked for advice on how to successfully comply with this requirement when many boards will not confirm whether the program meets licensure requirements until individuals apply for licensure or certification. Another commenter asked for clarification on what programs provide licensure or certification and would be bound by the licensure and certification disclosures. The commenter asked whether an accounting program that meets the requirements to sit for the Certified Public Accounting exam only in some States the program is offered in, but does not meet the qualifications to sit for that exam in other States, should be held to the licensure and certification disclosure.

Another commenter encouraged the Department to retain the requirement for an institution to provide direct disclosures, especially related to when a program does not meet the licensure and certification requirements for a State.

Discussion: The regulations do not require an institution to make an independent determination about whether the program it offers meets the licensure or certification requirements; the regulations provide that an institution may disclose that it has not made a determination as to whether a program's curriculum meets a State's educational requirements for licensure or certification. Including that option provides sufficient flexibility so that an institution need not incur any additional burden.

The Department agrees that students may have the same access to State licensure and certification requirements as an institution; however, students may not have access to the requisite information to determine whether the program meets those requirements without assistance from program experts at the institution.

The requirements in § 668.43(a)(2) are for all programs that lead to licensure or certification, or that should lead to licensure or certification, regardless of

whether these programs are offered through distance learning, through correspondence courses, at brick-and-mortar institutions, or through another modality.

While the Department believes that students who enroll in programs that do not meet licensure and certification requirements for a State could still be title IV eligible, the Department also believes that an institution should disclose this information to all individuals who enroll in these programs so that they are making an informed enrollment choice. The Department does not believe that this disclosure will dissuade institutions from offering legitimate academic programs that may lead to State licensure or certification since, absent confirmation of the program's alignment with licensure requirements, the institution can simply notify a student that they have not determined whether its program meets those requirements. If an institution opts to not confirm whether a program meets the requirements for a State because it enrolls a small percentage of students in that State, the institution will remain compliant by disclosing that it has not made a determination.

The Department understands that students may not plan to obtain licensure where they have established their location of record with the institution. However, the institution has an obligation to make this disclosure to students based on the students' current location. Additionally, we believe the term "located" will minimize confusion related to State legal residence requirements and is the term most commonly used by States in policies related to distance education.

The Department requires institutions to only advertise true and factual statements about their programs. While the Department does not preclude an institution from advertising a program for which it has not made a determination regarding the program's alignment with State licensure or certification requirements, the Department expects that institutions will accurately and truthfully provide that information on the required disclosure.

Regarding the timing of these disclosures, the Department expects that the institution will provide this disclosure before a student signs an enrollment agreement or, in the event that an institution does not provide an enrollment agreement, before the student makes a financial commitment to the institution. The Department further expects that an institution will determine a student's "location" based

on its published policies, and that the location may include the address provided by the student at the time of enrollment or at any point when the student notifies the institution in writing of a change in location to a new State.

The Department does not believe these regulations will limit the States in which an institution may recruit students since the institution can simply state that it has not determined whether the program meets State licensure or certification requirements in that State. However, the Department concedes that institutions that do make that determination may have a marketing advantage, since it might better inform student choice.

The Department notes that these regulations require direct disclosures to students regarding licensure and certification as described in § 668.43(c) and has not removed that requirement entirely; rather, the Department has clarified that this direct disclosure may be through email or other forms of electronic communication.

Changes: None.

Comments: Another commenter stated that they support this requirement but requested additional time for institutions to become compliant. Multiple commenters requested a delay of at least three years after the effective date of the regulations and contended that, since "brick-and-mortar" programs were not previously subject to this type of requirement, it would not be feasible to comply by July 1, 2020. Another commenter asked whether an institution must comply with both the current regulations, effective as of July 1, 2018, or the new regulations, which will become effective on July 1, 2020. The commenter argued that the creation of two different processes to comply with two separate regulations would be extremely burdensome to the institution.

Discussion: It is the Department's view that institutions do not require additional time to become compliant with the licensure or certification disclosure since an institution can comply with this disclosure requirement by informing students that it has not made a determination about whether its programs meet the licensure or certification requirements for a State. If the institution later makes a determination that its program does not meet a State's requirements for licensure or certification, it must disclose this fact. Therefore, the Department believes institutions can comply with this provision by July 1, 2020. Until July 1, 2020, an institution must comply with the disclosure requirements of the State

Authorization regulations published on December 19, 2016.

Changes: None.

Comments: Multiple commenters were supportive of the use of the term “location” when used for disclosures on licensure or certification, but asked for clarification on when, specifically, the Department considers an individual to be enrolled at the institution. One commenter also asked for clarification on what is meant by “formal receipt of change of address by a student” as it pertains to this disclosure. Another commenter stated that he supported the Department’s willingness to allow institutions to use their own policies to determine a student’s location.

Discussion: The institution determines the student’s location at the time of initial enrollment based on the information provided by the student, and upon receipt of information from the student that their location has changed, in accordance with the institution’s procedures. Institutions may, however, develop procedures for determining student location that are best suited to their organization and the student population they serve. For instance, institutions may make different determinations for different groups of students, such as undergraduate versus graduate students.

Changes: None.

Comments: One commenter strongly supported the Department’s proposal to require an institution to disclose information about teach-out plans.

Discussion: The Department appreciates the support of the commenter and believes that requiring disclosures about an institution’s teach-out plans and why an accrediting agency is requiring an institution to maintain one is an important disclosure for a student to receive.

Changes: None.

Comments: Multiple commenters raised concerns about the lack of specificity regarding what “actions” among the many actions that could be taken against an institution would require notification under the proposed rule, and what kind of “notice” would be sufficient to comply with this regulation.

In particular, one commenter stated that there are several types of notice, all of which might be legally sufficient depending on the circumstances, but nevertheless would reflect different approaches by institutions to meeting the standard.

Several other commenters, in addition to asking what constitutes sufficient notice, asked for greater clarity concerning which actions rise to the level of requiring notification. Another

commenter pointed out that damage could be done to an institution as a result of a notification requirement, if the institution is required to supply notice of an investigation, action, or prosecution by a law enforcement agency before the investigation is complete and concerns are substantiated, and that such damage could be unjustified to the extent that the concerns are not ultimately substantiated. These commenters did not directly oppose the requirement that institutions disclose adverse actions against them, as proposed in § 668.43(a)(20), but instead sought clarification regarding which actions rise to the level that requires notice.

One commenter noted the general burden on institutions given the number of disclosures already required of institutions.

Other commenters supported the inclusion of disclosures related to investigations conducted by a law enforcement agency for issues related to academic quality, misrepresentation, or fraud. One commenter sought to ensure that the proposed rulemaking includes actions from law enforcement agencies, attorney general offices, or state authorization entities so that all investigations that could impact an institution’s state authorization are included.

Discussion: As a matter of first principles, the Department believes a student is entitled to transparency and robust disclosure of pending legal actions by law enforcement agencies but realizes unwarranted allegations could impact the student’s ability to complete their education or diminish the value of their education. The Department believes that legal actions that bear on an institution’s accreditation, State authorization, or continuing participation under title IV are the types of legal actions that have the greatest potential to impact students. Therefore, by this rule, the Department seeks to ensure that these categories of legal actions are fully disclosed to students.

The Department recognizes, in light of comments that it received, that the disclosure language provided in this section of the NPRM lacks the necessary specificity to guide institutions as they grapple with the practical challenges of determining which actions should result in notification and how that disclosure should be made. The use of terms such as “actions” and “other severe matter[s]” would result in unnecessary and inappropriate ambiguity.

The Department agrees that it must more clearly define which categories of “actions” are subject to a notification requirement. The Department also

agrees with commenters that notification requirements that sweep in unproven allegations could cause reputational and financial injury to an institution, prevent a current student from completing their education, deter new enrollments in or transfers to the institutions, or discourage students from enrolling in a program that could benefit them. Disclosure of a government investigation that might not even lead to allegations of misconduct against an institution could create significant negative consequences, including for students and alumni.

Therefore, we are revising the regulations to eliminate investigations from the notification requirement, and better define what types of legal actions do require disclosure. Our goal is to ensure that students have access to information about pending legal proceedings, including those resulting from allegations of fraud or misrepresentation. This information may have the greatest potential to impact a student’s education—including on their ability to make an informed choice about which school to attend, to complete a degree or program at a school they have chosen, or to subsequently benefit from an earned credential, without its value being inappropriately undermined by as-yet-unproven allegations. To strike this balance, in the final rule we provide that institutions must disclose only pending enforcement actions or prosecutions by law enforcement agencies in which a final judgment against the institution, if rendered, would result in an adverse action by an accrediting agency, revocation of State authorization, or limitation, suspension, or termination of eligibility to participate in title IV.

Carving out the fact of investigations also protects students and graduates from having the value of their education or their chances of obtaining employment diminished merely because their educational institutions were subject to government investigations. While notification of pending enforcement actions or prosecution by a law enforcement agency could be useful to students to avoid enrolling at institutions that may be guilty of misrepresentation, the Department must balance this with damage that potential students could suffer if unfounded allegations against an institution deter students from enrolling in a program that would otherwise benefit them. In addition, the Department must balance the need to protect students against fraud and misrepresentation with the need to ensure that the value of a student’s credential and their future

employability are not unnecessarily diminished by false allegations against the institution.

This disclosure requirement, although it involves only disclosure to students and not reporting to the Secretary or a trigger for a letter of credit, mirrors the approach the Department took in its final 2019 Borrower Defense to Repayment (BD) rule. In the 2019 BD rule, in eliminating some mandatory triggers for letters of credit based on pending claims and non-final judgments, the Department recognized the inappropriateness of imposing sanctions upon an institution based on unproven allegations. The Department also learned, as a result of the 2016 BD rule, that requiring institutions to report to the Department all legal actions against them, without regard for materiality, created undue regulatory burden much larger than the level of burden estimated in the final 2016 BD rule. Relying on allegations or claims made against an institution to require an institution to provide a letter of credit also invites abuse and denies institutions due process by placing undue weight on unsubstantiated claims. Here, the Department is requiring institutions to focus on specific types of legal action—enforcement actions and prosecutions—by a specific set of governmental entities—law enforcement agencies—that could have the most significant negative impact on students, therefore enabling them to make informed enrollment decisions.

In this final regulation, disclosure is required only for enforcement actions and prosecutions, including those resulting from allegations of fraud or misrepresentation, where the institution can discern (based on the nature of the allegations and the progress of the case) that, if a final judgment is rendered against the institution, the institution's accreditor would take an adverse action against the institution, its State authorization would be revoked, or its title IV participation would be limited, suspended, or terminated. We have removed actions relating to "academic quality" from the list of actions requiring disclosure since accreditors and State authorizers are charged with making quality determinations, not State or Federal law enforcement agencies. Also, consistent with the 2019 BD rule, the Department is limiting the risks of abuse and denial of due process to institutions—by excluding the mere fact that an institution is under investigation from the disclosure requirement.

We appreciate those commenters who agreed with the Department's inclusion

of a disclosure requirement but asked that we clarify what a legally sufficient disclosure would look like. The Department agrees that greater clarity is necessary; however, this provision is part of a long list of items that must be disclosed by the institution and made readily available to enrolled and prospective students. The Department provides no additional guidance regarding how it must make those disclosures. Many institutions meet these requirements by including these disclosures on their website or in their catalog.

Changes: In response to comments, we have revised § 668.43(a)(20) to provide that an institution must disclose enforcement actions or prosecutions by law enforcement agencies that, upon a final judgment, would result in an adverse action by an accrediting agency, revocation of State authorization, or suspension, limitation or termination of eligibility to participate in title IV. Investigations that have not progressed to pending enforcement actions or prosecutions need not be disclosed—regardless of their subject matter.

Comments: One commenter supported the Department's proposal to require institutions to disclose written arrangements in the program description in instances in which they are used to engage a non-accredited entity in providing portions of the program.

Two commenters supported the Department's proposal to disclose the criteria used by institutions when evaluating prior learning experience stating that it is important to ensure that credits awarded based on a prior learning assessment are based on academic quality, which benefits students and the public. Another commenter noted that this disclosure can help improve academic completion while reducing education costs.

Discussion: The Department thanks the commenter for their support for disclosing written arrangements included in a program's description, as proposed in § 668.43(a)(12). The Department continues to believe that standardizing the location of this disclosure will provide uniform information to all students and provide them with easily accessible and discernable information in which to make enrollment decisions.

The Department also thanks the commenters for their support for the requirement that institutions disclose their policies for evaluating and assigning credit based on a student's prior learning experience, as outlined in § 668.43(a)(11)(iii). The Department continues to believe that this

information is important to inform student choice since students often learn only after enrolling at a new institution that credits they believed they would earn through prior learning assessment are no longer being considered or granted. In addition, institutions should publish their policies regarding the acceptance of credits in transfer that were awarded through prior learning assessment. The Department believes this will also encourage institutions to potentially save students and taxpayers time and money.

The Department disagrees with the characterization that it removed the requirements of disclosing a complaint process to students. To the contrary, the Department continues to require institutions to provide students with information about how to file a complaint against the institution with a relevant State agency. However, the regulations no longer require an institution to publish the complaint processes for both the State in which the student is located and the State in which the institution is located, as long as it discloses at least one point of contact for filing student complaints.

The Department's final regulations require institutions to provide students or prospective students with contact information for filing complaints with its accrediting agency and with at least one relevant State agency or official, either in the State in which the institution is located or in the State in which the student is located, or a third party identified by a State or a State reciprocity agreement, with whom the student can file a complaint.

Changes: None.

Institutional Disclosures for Distance or Correspondence Programs (§ 668.50)

Comments: Many commenters supported removing the requirements of § 668.50 and proposing similar requirements in § 668.43(b) because they supported providing disclosures to all students, regardless of the program's mode of delivery.

One commenter opposed removal of § 668.50 stating that the Department was deleting most of the disclosure requirements for distance education programs. They further claimed that we only moved two disclosure requirements to § 668.43.

One commenter disagreed with the explanation provided in the NPRM that the deletion of refund policies in § 668.50 eliminated a duplicative requirement already required under § 668.42(a)(2). The commenter stated that § 668.42(a)(2) does not require the disclosure of refund policies.

One commenter stated they disagreed with statements made regarding the requirements included in § 668.50. Specifically, they disagreed that the requirement to disclose adverse actions taken by a State or accrediting agency would be unnecessary. Instead, the commenter stated that these actions should be disclosed because those actions would generally lead to the program's ineligibility to participate in the title IV, HEA programs. The commenter stated that the definition of "adverse actions" differed depending on the accrediting agency and that some of those actions would be at the level of information gathering, or probation, which would not end in the loss of title IV eligibility. Another commenter provided similar thoughts by stating that an institution required to supply notice of an investigation, action, or prosecution may damage the institution if it must provide that notification prior to the completion of an investigation. However, another commenter recommended that the Department keep the required disclosure on adverse actions from accrediting agencies because they may directly affect a student's ability to obtain a professional license. One commenter opposed the removal of the requirement that an institution disclose adverse actions taken by an accrediting agency because there are often times when an accrediting agency takes an adverse action that stops short of stripping an institution of its title IV eligibility and that students deserve to know when an institution fails to meet the very standards that makes it eligible for title IV participation. That same commenter also requested that the Department define the term "adverse action" from a State rather than removing the requirement.

One commenter voiced support for a requirement to disclose adverse actions taken by a State or accrediting agency.

Discussion: The Department appreciates the support of those who supported removing § 668.50 and replacing those requirements with one that applies to all programs that lead to licensure or certification (or should lead to licensure or certification), regardless of the delivery modality of those programs. The Department believes this will provide all students with valuable information and necessary protections. However, the Department notes by moving disclosures from § 668.50, which only applied to distance education programs and correspondence courses, to § 668.43, which applies to all title IV eligible programs at institutions of higher education, the Department broadened the scope of these

requirements so that more students can make informed enrollment decisions.

The Department agrees with and thanks the commenter that noted it made an incorrect reference to current regulations requiring an institution to disclose refund policies. The Department meant to cite § 668.43(a)(2) instead of § 668.42(a)(2) as the section which requires institutions to disclose their refund policies. Section 668.43(a)(2) requires that institutions make readily available to enrolled and prospective students any refund policy with which the institution must comply for the return of unearned tuition and fees, or other refundable portions of costs paid to the institution. This covers the requirements of § 668.50(b)(6), which required institutions to disclose refund policies for the return of unearned tuition and fees with which the institution must comply under the laws of any State in which enrolled students reside.

The Department also notes that disclosures related to adverse actions are now described at § 668.43(a)(20), which requires an institution that an institution must disclose enforcement actions or prosecutions by law enforcement agencies that, upon a final judgment, would result in an adverse action by an accrediting agency, revocation of State authorization, or suspension, limitation or termination of eligibility to participate in title IV. Investigations that have not progressed to pending enforcement actions or prosecutions need not be disclosed—regardless of their subject matter. We respond to further comments about adverse actions in that section.

The Department has retained the language in § 602.24(c)(8)(ii) that an agency must not permit an institution to serve as a teach-out institution, if it is under investigation relating to academic quality, misrepresentation, fraud, or other severe matters by a law enforcement agency. We would consider an allegation or finding of criminal conduct, for example, to constitute a severe matter. The Department retains this language because of the contractual relationship between the closing institution and the teach-out institution, as well as the fact that the teach-out agreement must be approved by the accrediting agency, all of which give the teach-out institution the appearance of a preferred and streamlined option for students, and the teach-out institution benefits from an influx of new students. The Department has determined that to enjoy that benefit, the teach-out institution must not be subject to any ongoing investigation, as described in § 602.24(c)(8)(ii). The Department

believes that teach-out agreements constitute a unique and limited circumstance and, accordingly, has retained the consensus language excluding institutions that are subject to investigation as teach-out institutions.²⁷

The Department stands by its assessment that disclosures of adverse actions taken by accrediting agencies often came too late to inform student enrollment decisions. As such, the final regulations at § 668.43(a)(19) require that if an accrediting agency requires an institution to maintain a teach-out plan, the institution must disclose the reason that the accrediting agency required such a plan. The Department believes this will assist students who are considering enrollment in programs where institutions may be in danger of closing or losing accreditation by informing them of this risk. On the other hand, some students may find teach-out plans to be reassuring on the basis that, should an institution close, there are options available to them to complete their programs.

The institution is not precluded, as is also the case in the 2016 State authorization regulations, from providing information to students about any investigation, action, or prosecution and any disagreement that the institution has with the validity of these allegations. While the Department understands that adverse actions from an accrediting agency may impact a student's ability to obtain professional licensure, the Department believes the proposed disclosure in § 668.43(a)(19) addresses this concern and broadens it to accommodate all programs, not just those offered through distance or correspondence education. The Department emphasizes that, similar to requiring a letter of credit, requiring a teach-out plan does not necessarily mean that an institution will close, lose its accreditation, or lose its title IV eligibility; however, the teach-out plan will provide additional protections to students and taxpayers in the event that the institution does lose accreditation, State authorization, or title IV eligibility. The Department believes that § 668.43(a)(20) provides appropriate protection to students when the institution's or program's accrediting agency takes negative action, and provides clarifying details about the kinds of adverse actions that must be disclosed. However, in moving the requirement to § 668.43, the Department requires institutions to provide the

²⁷ Note: Nothing in § 602.24(c)(8)(ii) or anything in this document burdens, limits, or impedes the Department's determinations in, or interpretations of, the Institutional Accountability regulations at 84 FR 49788.

disclosure to students enrolled in all programs, not just distance education or correspondence programs.

The Department thanks the commenter that supported the Department's changes to § 668.50.

Finally, we note that the amendatory instruction to remove § 668.50 was unintentionally omitted from the NPRM.

Changes:

Comments: None.

Discussion: As described above, we believe that the substance of current § 668.50 should be removed. In its place, we have added language to clarify that, if any part of the regulations for part 668, subpart D, whether an individual section or language within a section, is held invalid by a court, the remainder would still be in effect. We believe that each of the provisions discussed in this preamble serve one or more important, related, but distinct, purposes. Each provision provides a distinct value to the Department, the public, taxpayers, the Federal government, and institutions separate from, and in addition to, the value provided by the other provisions.

Changes: We have revised § 668.50 to remove the current text and added, in its place, text that clarified that the regulations are designed to operate independently of each other and to convey the Department's intent that the potential invalidity of one provision should not affect the remainder of the provisions.

Severability (§ 668.198)

Comments: None.

Discussion: We have added § 668.198 to clarify that if a court holds any part of the regulations for part 668, subpart M, invalid, whether an individual section or language within a section, the remainder would still be in effect. We believe that each of the provisions discussed in this preamble serve one or more important, related, but distinct, purposes. Each provision provides a distinct value to the Department, the public, taxpayers, the Federal government, and institutions separate from, and in addition to, the value provided by the other provisions.

Changes: We have added § 668.198 to make clear that the regulations are designed to operate independently of each other and to convey the Department's intent that the potential invalidity of one provision should not affect the remainder of the provisions.

Executive Orders 12866, 13563, and 13771

Regulatory Impact Analysis

Under Executive Order 12866, it must be determined whether this regulatory action is "significant" and, therefore, subject to the requirements of the Executive order and subject to review by the Office of Management and Budget (OMB). Section 3(f) of Executive Order 12866 defines a "significant regulatory action" as an action likely to result in a rule that may—

(1) Have an annual effect on the economy of \$100 million or more, or adversely affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities in a material way (also referred to as an "economically significant" rule);

(2) Create serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles stated in the Executive order.

This final rule is an economically significant action and will have an annual effect on the economy of more than \$100 million because the proposed changes to the accreditation process could increase student access, improve student mobility, and allow for the establishment of more innovative programs, including direct assessment programs, that may attract new students. According to the Department's FY 2020 Budget Summary, Federal Direct Loans and Pell Grants accounted for almost \$124 billion in new aid available in 2018. Given this scale of Federal student aid amounts disbursed yearly, even small percentage changes could produce transfers between the Federal government and students of more than \$100 million on an annualized basis.

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), the Office of Information and Regulatory Affairs designated this rule as a "major rule," as defined by 5 U.S.C. 804(2).

This final rule is considered an E.O. 13771 deregulatory action. We estimate that this rule will generate approximately \$16.0 million in annualized net PRA costs at a 7 percent discount rate, discounted to a 2016 equivalent, over a perpetual time horizon. While there will be some PRA burden increase, we believe the greater effect of this regulation is to allow for

additional entrants or enhanced competition in the postsecondary accreditation market and to promote innovation in higher education and it is deregulatory.

As required by Executive Order 13563, the Department has assessed the potential costs and benefits, both quantitative and qualitative, of this regulatory action, and we are issuing these final regulations only on a reasoned determination that their benefits justify their costs. In choosing among alternative regulatory approaches, we selected those approaches that maximize net benefits. Based on the analysis that follows, the Department believes that the regulations are consistent with the principles in Executive Order 13563.

We also have determined that this regulatory action does not unduly interfere with State, local, or Tribal governments in the exercise of their governmental functions.

In accordance with the Executive orders, the Department has assessed the potential costs and benefits, both quantitative and qualitative, of this regulatory action. The potential costs associated with this regulatory action are those resulting from statutory requirements and those we have determined as necessary for administering the Department's programs and activities.

In this regulatory impact analysis, we discuss the need for regulatory action, the potential costs and benefits, net budget impacts, assumptions, limitations, and data sources, as well as regulatory alternatives we considered.

Elsewhere in this section, under *Paperwork Reduction Act of 1995*, we identify and explain burdens specifically associated with information collection requirements.

Need for Regulatory Action

These final regulations address several topics, primarily related to accreditation and innovation. The Department issues these regulations primarily to update the Department's accreditation recognition process to reflect only those requirements that are critical to assessing the quality of an institution and its programs and to protect student and taxpayer investments in order to reduce unnecessary burden on institutions and accrediting agencies and allow for greater innovation and educational choice for students.

In addition, these final regulations are needed to strengthen the regulatory triad by more clearly defining the roles and responsibilities of accrediting agencies, States, and the Department in

oversight of institutions participating in title IV, HEA programs. These final regulations revise the definition of “State authorization reciprocity agreement” to clarify that such agreements cannot prohibit any member State of the agreement from enforcing its own general-purpose State laws and regulations outside of the State authorization of distance education.

Another area addressed in these final regulations is the definition of “religious mission” as a published institutional mission that is approved by the governing body of an institution of postsecondary education and that includes, refers to, or is predicated upon religious tenets, beliefs, or teachings. These final regulations require accrediting agencies to consistently apply and enforce standards that respect the stated mission of the institution, including religious mission, and to not use not use as a negative factor the institution’s religious mission-based policies, decisions, and practices in the areas covered by § 602.16(a)(1)(ii), (iii), (iv), (vi), and (vii).

Summary of Comments on the RIA

A number of commenters raised points about the analysis of these regulations in the NPRM. The Department summarizes and responds to comments related to the RIA here.

Comments: One commenter noted that the expense incurred by their accrediting agency to submit a recognition application was not unreasonable under the current regulations and while they agreed generally with the review process changes, they did not see the proposed changes as entirely justified.

Discussion: The Department thanks the commenter and welcomes the feedback. The Department believes the changes are justified for the numerous reasons outlined in the NPRM and elsewhere in this document. While the Department appreciates that some accrediting agencies can manage the existing burden, other agencies are struggling to do so or, at the very least, could redirect resources away from paperwork burden and towards direct work with the institutions or programs the agency oversees. The Department has received petitions for renewal of recognition that exceed 60,000 pages. Also, these new regulations provide staff the opportunity to randomly select files to review, and to perform oversight that includes a more representative sample and variety of documents—and not only those that an agency decides to submit.

The Department also, as stated elsewhere, believes that a number of the

current regulations prevent competition, create unnecessarily high barriers to entry for new accrediting agency, and make it difficult for institutions to effect the radical changes necessary to reduce cost and improve outcomes through educational innovations. The current regulations similarly do not differentiate between high-risk activities that demand greater attention, and low-risk activities that do not justify distracting agency decision-making bodies from more critical concerns related to ensuring educational quality. In addition, these regulations seek to reduce unnecessary delays in developing and implementing curricular and other changes in order to meet employer needs. These regulations also encourage institutions to participate in orderly teach-outs, thus providing more students with the opportunity to complete their program or transition to a new institution should their current institution close. Finally, these regulations eliminate the distinction between students enrolled in distance learning programs that lead to licensure and ground-based programs focused on the same by ensuring that all students—regardless of instructional modality—understand whether the institution’s programs will meet educational requirements for a graduate to become licensed and work in their field in a given State.

Changes: None.

Comments: One commenter stated that the Department failed to provide any legal, policy, factual, or cost-benefit analysis for the new definition of “religious mission” or the exemptions to accrediting agency standards. They point out that the definition is not mentioned in the RIA and no potential costs are cited if an institution claims exemption from any of a wide range of accreditation standards. Furthermore, there is no estimate of how many institutions may assert exemptions from accrediting standards based on the definition or from what types of standards they may assert exemptions.

Discussion: The Department appreciates the commenter pointing out the need for discussion of the definition of religious mission and the associated impacts.

Changes: We have added discussion of the definition of “religious mission” in the Costs, Benefits, and Transfers section.

Comments: One commenter contended that the Department did not present any evidence that the current regulations have created any substantive barriers to innovation and noted that, in fact, as an example, distance education enrollment has grown significantly over

the past two decades under the oversight of accrediting agencies. The commenter also contended that it may be desirable to have certain barriers in place to promote quality and protect students.

The same commenter stated that the Department is greatly underestimating the cost of these final regulations, citing the \$3.8 billion estimate, with the reported range of estimated Pell Grant increases from \$3.1 billion to \$4.5 billion as too low and the increase in loan volume and Pell Grant recipients of at most two percent by 2029 as also too low. The commenter alluded to historical evidence regarding the cost of innovation, citing the change from 1997 to 1998—prior to passage of a demonstration project that allowed institutions to move entirely online—to Fall 2017, after the law changed to permit online-only institutions. The commenter stated that according to NCES data, enrollment in distance education programs during this period increased tremendously, from 1.3 million to over 6.5 million students.

The commenter claimed that the estimated two percent increase reflected in the NPRM is likely a “significant underestimate” given the potential for new accrediting agencies, new providers, and new programs eligible for Federal funding. Also, according to the commenter, the Department failed to adequately consider costs associated with reduced oversight. The commenter stated that these final regulations are likely to greatly increase borrower defense claims that would arise from institutions operating without strong oversight from accrediting agencies and continuing to operate under new ownership after closure, and that, because the Department has not yet issued new final borrower defense regulations, it must estimate these costs based on the 2016 borrower defense regulations currently in effect. The commenter further noted that the added costs from borrower defense claims would be partially offset by fewer closed school discharges resulting from fewer institutions closing.

The commenter stated that under these final regulations the bar would be lower for entry to new accrediting bodies and therefore the Department should assume an increase in new accrediting agencies.

The commenter provided Department of Labor (DOL) data showing that DOL proposed to create “standards recognition entities” (SREs) that would act like accrediting agencies to approve apprenticeship programs. DOL estimates that it would receive 300 applications of which 100 would be totally new

applicants without any experience in the area. The commenter believed the Department should assume a more significant increase in applicants for Department recognition than it does as well as institutions that would be seeking sources of funding such as Title IV.

The commenter stated that the Department's estimate of \$3.8 billion for regulatory changes that affect the entire higher education landscape is less than the \$6.2 billion it projects from rescinding gainful employment regulations that affect proprietary school programs and non-degree programs at public and nonprofit institutions that represent only a portion of the higher education landscape.

The commenter asserted that the Department should revise its estimates substantially upwards.

Discussion: The Department believes that the final regulations strike the right balance between the goals of encouraging innovation and ensuring accountability while providing sufficient oversight of accrediting agencies and institutions and protecting students, taxpayers, and the Federal government.

With respect to the increase in distance education dating back to 1997, the Department acknowledges that the impact of the expansion of distance education on total number of enrollments was significant as technological advances reduced barriers to entry for students who could not otherwise participate in opportunities offered by traditional ground campuses. The Great Recession further contributed to enrollment growth as high unemployment drove more individuals to participate in postsecondary education. In addition, regulatory changes that eliminated policies that once limited growth on line by the growth of programs on the ground also contributed to significant growth of enrollments in online education. While the proportion of enrolled students who take some or all classes online is increasing, the total number of students enrolled is shrinking. This suggests that how students receive education may continue to change, and this regulation could encourage even greater shifting of students to online modalities. Enrollments are shrinking at many institutions, including most online institutions.^{28 29} The Department also notes that the internet itself and the world wide web were only becoming popular in the mid-1990s and, according to many sources, including

the National Science Foundation,³⁰ by 1995, the internet was fully commercialized in the United States when the National Science Foundation Network was decommissioned, removing the last restrictions on use of the internet to carry commercial traffic.

In fact, according to a research article published in the journal *Science*, "The internet's takeover of the global communication landscape was almost instant in historical terms: It only communicated 1% of the information flowing through two-way telecommunications networks in the year 1993, already 51% by 2000, and more than 97% of the telecommunicated information by 2007."³¹ So, a substantial amount of growth in all online activity in the 1990s is attributable to the new internet and world wide web activity taking place in the mid-1990s. Therefore, a comparison between the vast innovation taking place in the online technology arena over a 20-year period with any innovation evolving as a result of these regulations is not an "apples-to-apples" comparison.

The Department believes that its financial aid estimates related to these regulations are not "greatly underestimated" as the commenter asserts. In fact, the Department realizes that any cost estimates relating to regulations of this type carry a strong element of speculation since many other variables are at play over the budget window from 2020 to 2029. And the Department also was cognizant of the lower estimate made concerning the lifting of the 50 percent rule related to institutional online courses, which, among other issues, underestimated the number of adult learners who wanted to enroll in postsecondary education if they could do so without quitting their jobs or enrolling in campus-based programs.

Therefore, the Department provided three scenarios incorporating low, medium, and high assumptions consistent with regulatory guidelines. And, the Department does estimate that under the high scenario, additional higher educational costs of \$4.5 billion are possible. While there is no definitive way to test these assumptions in the future, the Department does not accept the commenter's assertion that the Department is reducing accrediting agency oversight and weakening agency

oversight of institutions which will result in significantly higher costs. The Department does not accept the premise that it is lowering the bar to accrediting oversight and reducing Federal responsibility. Given this different prediction about the outcome of these final regulations compared to the commenter, we do not anticipate a significant increase in borrower defense claims from these final regulations. The subsidy cost associated with the estimated increase in volume for these final regulations was based on the President's Budget FY 2020 baseline which included the implementation of the 2016 Borrower Defense rule and we do not believe these final regulations will necessarily lead to an increase in bad actors or conduct that would give rise to borrower defense claims under any version of that regulation. We also do not expect a substantial difference in the number of closed schools from these final regulations, so we do not estimate any savings from reduced closures tied to fewer accrediting agency actions at this time.

Rather, as discussed earlier in the preamble, the Department views these regulations as enabling accrediting agencies and institutions to be nimbler and more responsive to changing economic conditions and workforce demands. The Department believes that the regulations are in the best interests of both students and taxpayers and will enable institutions to improve the quality of education.

The Department appreciates the comments regarding DOL's recent NPRM to establish new Standards Recognition Agencies (SRAs). While there are similarities between SRAs and accrediting agencies, those similarities are limited to the need to evaluate quality based on a set of published standards or metrics. It is also important to note that SRAs are likely to include industry trade associations and other private-sector entities that may pay higher salaries or have higher costs of operating and decision-making based on the structure of these entities and salary trends in certain industries. DOL's cost estimates for establishing SRAs have no bearing on the Department's cost estimates related to reducing unnecessary regulatory burden, encouraging institutions to close in orderly fashions rather than precipitously, or allowing new agencies to enter a field that has a well-established history and a large number of existing participants. The Department believes it would be inappropriate to apply DOL's assumptions for the cost of creating a new quality assurance system to our regulations, which are designed

³⁰ www.nsf.gov/news/special_reports/cyber/internet.jsp.

³¹ "The World's Technological Capacity to Store, Communicate, and Compute Information," Martin Hilbert and Priscila López (2011), *Science*, 332(6025), pp. 60–65, available at: martinhilbert.net/WorldInfoCapacity.html.

to increase competition and refocus accrediting agency activities on educational quality and the student experience.

The estimates for these regulations do not assume loan performance will decline due to the rescission of the gainful employment rule. Although the gainful employment regulations primarily affect a limited number of institutions, their impact could have been significant, as they tied ineligibility to the debt-to-earnings metric. However, with only one year of GE data available, it is hard to speculate on the long-term impact of the GE regulations and whether program closures would have reduced the total number of students enrolled, or simply shifted where these students enrolled or which programs they pursued. On the other hand, although these regulations will affect all sectors, we believe their impact will be more limited.

Changes: None.

Costs, Benefits, and Transfers

As discussed in the NPRM, the Department is amending the regulations governing the recognition of accrediting agencies and institutional eligibility and certain student assistance general provisions, as well as making various technical corrections. A number of clarifying changes were made in these final regulations, including updates to the definitions of terms including State authorization reciprocity agreements, teach-out, and compliance report; noting that prior approval is required for an aggregate change of 25 percent or more of the clock hours, credit hours, or content of a program since the agency's most recent accreditation review; and requiring disclosure of negative actions taken by an accrediting agency, provided that an institution need not disclose allegations, lawsuits, or legal actions taken against it unless the institution has admitted guilt or there has been a final judgment on the merits. Additionally, we have made it clear that title IV participation may be extended for 120 days only after a decision to end participation has been made, but prior to the termination of accreditation, State authorization, or the program participation agreement. All of these changes are detailed in the Analysis of Comments and Changes section of this preamble and none are expected to significantly change the net budget impact or cost and benefits of the final regulations to students, institutions, or accrediting agencies.

These final regulations will affect students, institutions of higher education, accrediting agencies, and the Federal government. The Department

expects students, institutions, accrediting agencies, and the Federal government will benefit as these final regulations will provide transparency and increased autonomy and independence of agencies and institutions. We also intend for these final regulations to increase student access to postsecondary education, improve teach-outs for students at closed or closing institutions, restore focus and clarity to the Department's agency recognition process, and integrate risk-based review into the accreditation recognition process.

The Department of Education Organization Act of 1979 (Pub. L. 96–88) prohibits the Department from intervening in institutional decisions regarding curriculum, faculty, administration, or academic programs of an institution of higher education. Instead, Congress assigned accrediting agencies the role of overseeing the quality of institutions and academic sufficiency of instructional programs. The Secretary recognized 53 accrediting agencies as of April 2019 as shown on the Department's financial aid accreditation websites.³² In addition, there were four State approval agencies that are also identified as title IV gatekeepers for the approval of postsecondary vocational education and five State approval agencies for the approval of nurse education (for non-title IV, HEA purposes).

The 53 accrediting agencies are independent, membership-based organizations that oversee students' access to qualified faculty, appropriate curriculum, and other support services. Of the 53 accrediting agencies recognized by the Secretary, 36 accredit institutions for title IV, HEA purposes and 17 solely accredit programs. While postsecondary accreditation is voluntary, accreditation from either a nationally recognized accrediting agency or State approval agency is required for an institution to participate in the title IV, HEA programs. One goal of our negotiated rulemaking was to examine the Department's accreditation regulations and processes to determine which are critical to assessing the quality of an institution and its programs and to protecting student and taxpayer investments. In negotiating these regulations, negotiators reached consensus on the processes that accrediting agencies should follow and understood that certain tradeoffs would be inevitable. Providing greater flexibility in how agencies approach the accrediting process and promoting innovative practices while reducing

administrative burden and streamlining operations are key objectives of these final regulations.

The regulatory impact on the economy of these final regulations centers on the benefits of, and the tradeoffs associated with, (1) streamlining and improving the Department's process for recognition and review of accrediting agencies and (2) enabling accrediting agencies to exercise greater autonomy and flexibility in their oversight of member institutions and programs in order to facilitate agility and responsiveness and promote innovation. Although we estimate here the marketplace reaction by accrediting agencies, students, institutions, and governmental entities to such regulatory changes, generally, there is little critical data published on which to base estimates of how these final regulations, which primarily promote flexibility in accrediting processes, will impact various market segments.

Accrediting Agencies

These final regulations will allow accrediting agencies the opportunity to exercise a greater degree of choice in how they operate. One key change in these final regulations pertains to the concept of not limiting an agency's accrediting activities to a particular geographic region. These final regulations remove the "geographic area of accrediting activities" from the definition of "scope of recognition or scope." The current practice of recognizing geographic scope of an accrediting agency may discourage multiple agencies from also including the same State in their geographic scope. By removing this potential obstacle and acknowledging that many agencies already operate outside their recognized geographic scope, the Department seeks to provide increased transparency and introduce greater competition and innovation that could allow an institution or program to select an accrediting agency that best aligns with the institution's mission, program offerings, and student population.

Under these final regulations, we will no longer require accrediting agencies to apply to the Department to change the geographic region in which the agencies accredit institutions, which occurs about once a year. However, we will require accrediting agencies to include in public disclosures the States ("geographic area") in which they conduct their accrediting activities. This includes not only those States in which they accredit main campuses, but also the States in which the agencies accredit branch campuses or additional

³² <https://ope.ed.gov/dapip/#/home>.

locations. This will promote greater transparency and clarity for students while eliminating burden on agencies and the Department of recognition proceedings focusing on geographic scope as well as the anticompetitive impact of the Department appearing to endorse allocation among individual agencies of discrete geographic regions.

In general, these final regulations will simplify the labeling of accrediting agencies to better reflect their focus. Therefore, the Department will no longer categorize agencies as regional or national; we will instead include them under a combined umbrella identified as “institutional” or “nationally recognized.” The terms “regionally accredited” and “nationally accredited” related to institutional accreditation will no longer be used or recognized the

Department. We will, however, allow agencies to market themselves as they deem appropriate. Programmatic agencies that currently accredit particular programs will retain that distinction under these final regulations.

As a result of these changes, the Department expects that the landscape of institutional accrediting agencies may change over time from one where some agencies only accredit institutions headquartered in particular regions (as shown on the map in Chart 1) to one where institutional accrediting agencies accredit institutions throughout many areas of the United States based on factors such as institutional mission rather than geography. As indicated in Chart 2, provided by the Higher Learning Commission during the

negotiated rulemaking sessions for this regulation, many of the institutions accredited by regional accrediting agencies engage in activities outside of their region so geographic distinctions in accreditation are less meaningful than they once might have been. As a result of these regulations, some accrediting agencies may capture a larger share of the market while agencies that specialize in niche areas may enjoy strong demand. However, we will not require any institution or program to change to a different accrediting agency as a result of these regulatory changes, nor will we require an agency to accept a new institution or program for which it did not have capacity or interest to accredit.

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Chart 1: Regional Accrediting Agency Coverage Map³³

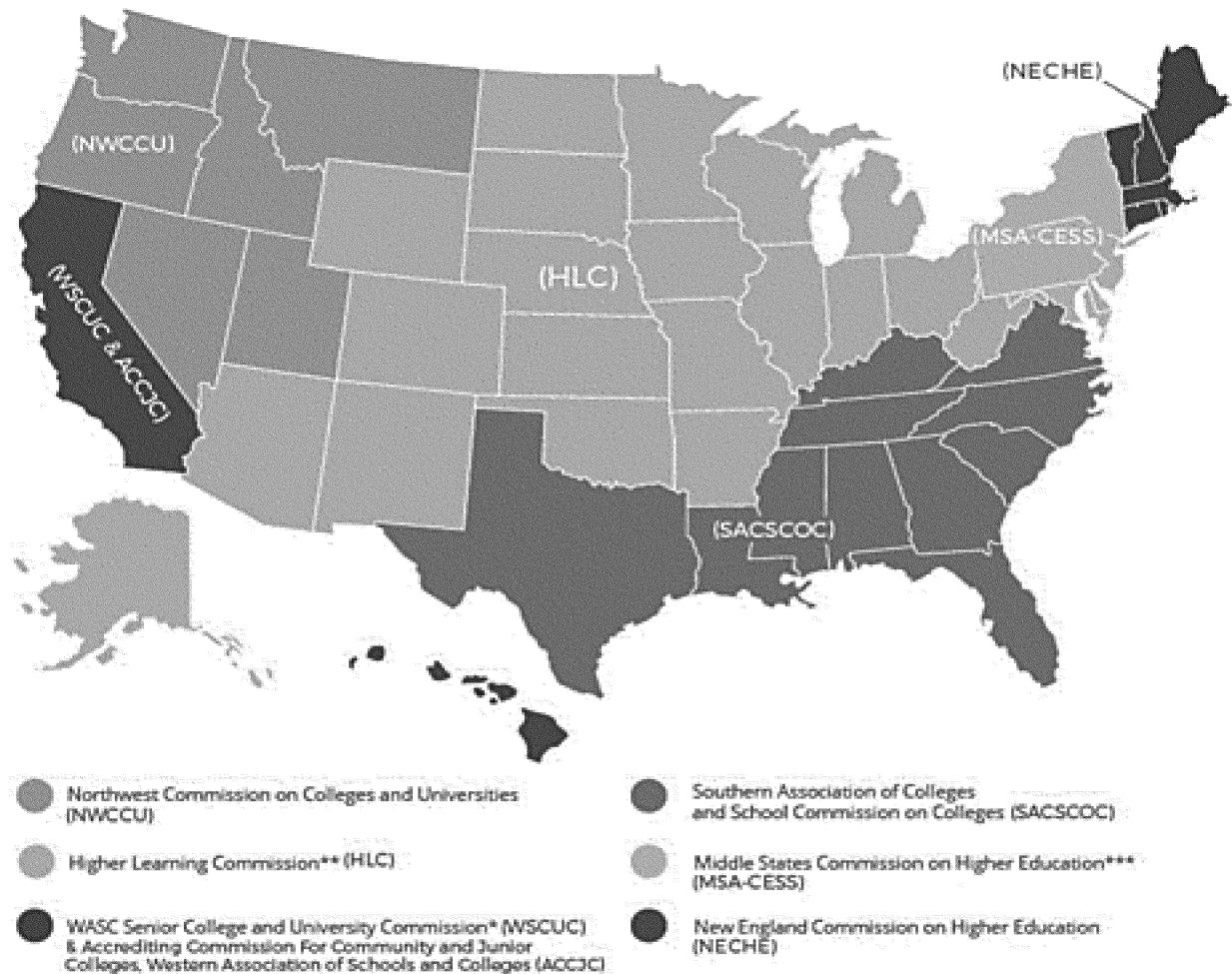
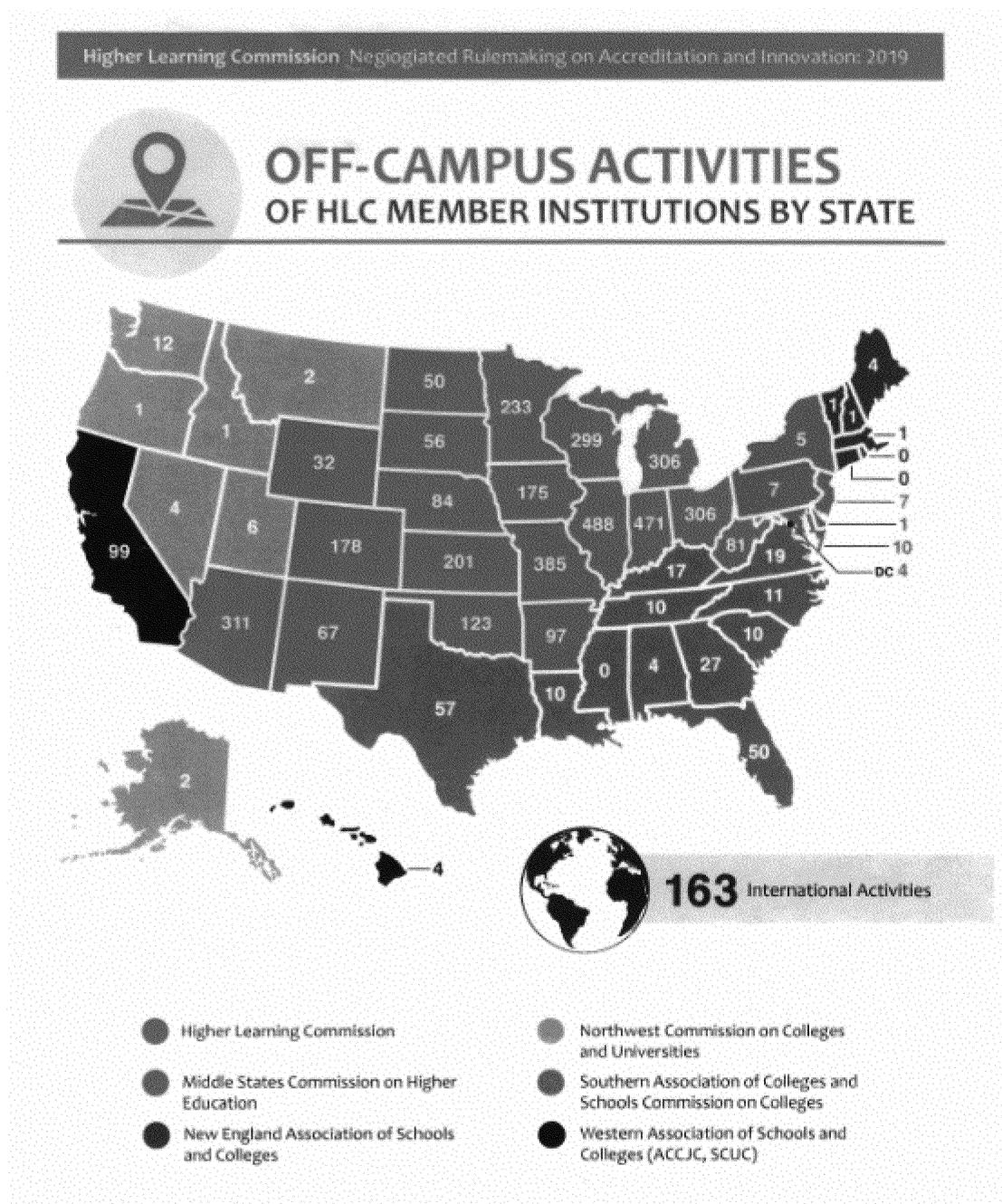


Chart 2: Off-Campus Activities of HLC Member Institutions by State³⁴



BILLING CODE 4000-01-C

Under these final regulations, accrediting agencies may realize burden reduction, streamlined operations, and

³³ Council for Higher Education Accreditation, Regional Accrediting Organizations web page. Available at <https://www.chea.org/regional-accrediting-organizations-accreditor-type>.

³⁴ Higher Learning Commission, Accreditation and Innovation.pdf Available at <https://www2.ed.gov/policy/highered/reg/hearulemaking/2018/index.html>.

an increase in autonomous control. For example, under the current regulations, an agency found to have a minor deficiency (such as a missing document) would be required to submit a compliance report, of which there were 17 submitted between 2014 and 2018. Agencies required to prepare compliance reports need to invest a significant amount of time and resources. Additionally, compliance reports require extensive review by

Department staff, NACIQI, and the senior Department official (SDO), at a minimum. Under these final regulations, the Department may find an agency to be substantially compliant and require it to submit a less burdensome monitoring report to address the concern without requiring NACIQI or SDO review, saving the agency and the Department time and money while maintaining ample oversight and preserving the same

opportunity to require the more extensive review if the agency's shortcomings prove to be not as readily remediated as anticipated. The final regulations will also reduce burden by allowing accrediting agencies to use senior staff instead of the agency's accrediting commission to approve substantive changes proposed by accredited institutions or programs. This allows accrediting agencies to structure their work more efficiently and permit the accredited entities to obtain agency approval more expeditiously where appropriate.

Under these final regulations, for institutions to receive recognition of preaccreditation or accreditation by the Secretary, they must agree to submit any dispute with the accrediting agency to arbitration before bringing any other legal action. This requirement highlights the existing statutory requirement, enables agencies to pursue adverse actions without an immediate threat of a lawsuit, and potentially minimizes litigation costs for accrediting agencies and institutions. The relative costs of litigation and arbitration can vary depending upon the nature of the dispute, the parties involved, varied costs in different States, and several other factors. According to the Forum, previously known as the National Arbitration Forum, total arbitration costs can amount to only 25 percent of the cost to bring the same action to court.³⁵ Another article entitled "The Iceberg: The True Cost of Litigation Versus Arbitration" cites the average cost of arbitration for a business as approximately \$70,000 while the average litigation costs for a given business total over \$120,000.³⁶

The Department does not receive information about the number of disputes between accrediting agencies and institutions that go to litigation or arbitration or data about the costs associated with both those actions. An initial review of legal news sources indicates a range of lawsuits and outcomes involving accrediting agencies and institutions.³⁷⁽¹⁴⁾

The likelihood is that, from a cost perspective, arbitration will be considerably less expensive for the accrediting agencies and institutions than litigation in the first instance and the assumption is outcomes will not vary greatly according to the process pursued. We note, however, that the final regulations do not preclude an institution from pursuing a legal remedy—as provided for in statute—after going to arbitration. Therefore, the arbitration requirement may not ultimately change institutional behavior.

Under these final regulations, accrediting agencies are required to report a number of items to the Department, institutions, or the public, as shown in the *Paperwork Reduction Act* section of this preamble. Accrediting agencies must, among other things: (1) Notify the Department of, and publish on their websites, any changes to the geographic scope of recognition; (2) publish policies for any retroactive application of an accreditation decision; (3) provide institutions with written timelines for compliance and a policy for immediate adverse action when warranted; (4) provide notice to the Department and students of the initiation of an adverse action; (5) update and publish requirements related to teach-out plans and teach-out agreements; and (6) redact personally identifiable and other sensitive information prior to sending documents to the Department.

We estimate the burden for all accrediting agencies will be 6,562 hours and \$297,652 annually at a \$45.36 wage rate. There are also some provisions expected to reduce burden on accrediting agencies, including: (1) Allowing decisions to be made by a senior staff member; (2) using SDO determination and monitoring reports and reducing preparation and attendance at NACIQI meetings; and (3) removing existing requirements related to evaluating credit hours. We estimate that these changes will reduce burden for all accrediting agencies by 2,655 hours and \$120,431 at a \$45.36 wage rate. We estimate the net annual burden for all accrediting agencies to be 3,907 hours and \$177,222. We based these estimates on the 2018 median hourly wage for postsecondary education

agency's appeal decision and requiring agency to conduct a new appeal); *St. Andrews Presbyterian College v. Southern Ass'n of Colleges and Schools, Inc.*, 679 F. Supp. 2d 1320 (N.D. Ga. 2009) (upholding withdrawal of accreditation after 2 years of litigation); *Western State University of Southern California v. American Bar Ass'n*, 301 F. Supp. 2d 1129 (C.D. Calif. 2004) (granting preliminary injunction against withdrawal of provisional accreditation).

administrators in the Bureau of Labor Statistics Occupational Outlook handbook.³⁸

Institutions

These final regulations will also affect institutions. Institutions may benefit from a more efficient process to establish new programs and the opportunity to seek out alternate accrediting agencies that specialize in evaluating their type of institution. Institutions may also benefit from having the option to use alternative standards for accreditation under § 602.18, provided that the institution demonstrates the need for such an alternative and that it will not harm students. Institutions will also benefit from accrediting agencies having the authority to permit the institution to be out of compliance with policies, standards, and procedures otherwise required by the regulations, for a period of up to three years, and longer for good cause shown, where there are circumstances beyond the institution's or program's control requiring this exception. This gives institutions flexibility in the event of a natural disaster, a teach-out of another institution's students, significant documented local or national economic changes, changes in licensure requirements, undue hardship on students, and the availability of instructors who do not meet the agency's faculty standards but are qualified by education or work experience to teach courses within a dual or concurrent enrollment program.

In making decisions about changing accrediting agencies, institutions will have to balance the expense of maintaining existing accreditation while working with new agencies and the possible reputational effects of appearing to shop for accreditation. On the other hand, if accrediting agencies do realign over time, some institutions may need to seek out alternate accreditation as their current agency may elect to specialize in a different market segment.

The following table, based on Federal Student Aid (FSA) information as of April 2019, summarizes data related to title IV eligible institutions and their distribution according to type of primary accrediting agency, also known as the title IV gatekeeper accrediting agency.

³⁸ Bureau of Labor Statistics, U.S. Department of Labor, *Occupational Outlook Handbook*, Postsecondary Education Administrators, on the internet at <https://www.bls.gov/ooh/management/postsecondary-education-administrators.htm> (visited May 21, 2019).

³⁵ www.ffiec.gov/press/comments/nationalarbforum.pdf.

³⁶ <https://landwehrlawmn.com/cost-litigation-arbitration/>.

³⁷ See, e.g., *Wards Corner Beauty Academy v. National Accred. Comm'n of Arts & Sciences*, 922 F.3d 568 (4th Cir. 2019) (affirming denial of relief to institution challenging withdrawal of accreditation); *Professional Massage Training Center, Inc. v. Accreditation Alliance of Career Schools and Colleges*, 781 F.3d 161 (4th Cir. 2015) (reversing district court's decision to order reinstatement of accreditation and to award damages); *Escuela de Medicina San Juan Bautista, Inc. v. Liaison Committee on Medical Education*, 820 F. Supp. 2d 317 (D.P.R. 2011) (granting preliminary injunction vacating accrediting

As currently configured, both public and private non-profit institutions overwhelmingly use regional accrediting agencies as their primary

agency for title IV participation, whereas proprietary institutions almost exclusively use national agencies. We do not require foreign schools to report

accreditation information, although they may do so. We show foreign schools simply to provide context for how many are participating.

Table 1: Summary of Title IV Gatekeeper Agencies by Type and Institutional Sector

Primary Agency Type	Public	Private, Non-profit	Proprietary	Foreign	Total
Regional	<u>1,554</u>	<u>1,230</u>	<u>91</u>	<u>0</u>	<u>2,875</u>
National	<u>306</u>	<u>474</u>	<u>1,692</u>	<u>0</u>	<u>2,472</u>
N/A				<u>396</u>	<u>396</u>
<u>Total</u>	<u>1,860</u>	<u>1,704</u>	<u>1,783</u>	<u>396</u>	<u>5,743</u>

As stated earlier, under these final regulations, the Department considers regional and national accrediting agencies under one overall “institutional” umbrella. One objective of this policy is to increase students’ academic and career mobility, by making it easier for students to transfer credits to continue or attain an additional degree at a new institution, by eliminating artificial boundaries between institutions due in part to reliance on a reputation associated with certain types of accrediting agencies. While this change would primarily result in some realignment of accrediting agencies and institutions, there is potential that certain postsecondary students could benefit and be enabled to transfer and continue their education at four-year institutions where previously they could not do so. This may result in greater access and increased educational mobility for students coming from proprietary institutions that use national accrediting agencies. It also may result in the award of increased financial aid, such as Federal Direct Student Loans and Pell Grants, on behalf of students pursuing additional higher education.

From an impact perspective, there may be several outcomes. The likelihood in the near term is that the status quo—under which institutions, especially four-year institutions, maintain their distinction under institutional accreditation—prevails, and the impact is essentially zero or

neutral. The Department is prohibited from dictating an institution’s credit transfer or acceptance policy, though it strongly discourages anticompetitive practices or those that deny students the ability to continue their education without an evaluation of that student’s academic ability or prior achievement. The Department is hopeful that changes in these regulations will make it easier for institutions to voluntarily set policies that promote competition, support strong academic rigor, and allow qualified credits to transfer. Nevertheless, we do not prohibit other practices in these final regulations, and certain institutions may initially resist the changes intended by these final regulations.

A shift from strictly geographic orientation may occur over time, probably measured in years, as the characterization of “institutional” in terms of accreditation becomes more prevalent and greater competition occurs, spurring an evolving dynamic marketplace. Accrediting agencies may align in different combinations that coalesce around specific institutional dimensions or specialties, such as institution size, specialized degrees, or employment opportunities. If access to higher-level educational programs by students improves, the Department anticipates some modest increase in financial aid, through Federal sources such as Direct Loans and Pell Grants.

The Department approaches estimates for increased financial aid in terms of a

range of low, medium, and high impacts based on student risk groups and institution sectors. This analysis appears in the section on *Net Budget Impacts*. A factor that could increase the Federal aid received by institutions is the proposed extension of time for achieving compliance in § 602.20, which may reduce the likelihood an accrediting agency will drop an institution.

Institutions with a religious mission would benefit from the requirement that accrediting agencies do not hold positions and policies resulting from that religious mission that do not interfere with the institution’s or program’s curricula including all core components required by the agency against the institution in its review. As of June 14, 2018, 277 institutions participating in title IV programs hold a religious exemption from some part of the regulations applicable to postsecondary institutions. These institutions, and others that may have similar religious missions, will be able to pursue such exemptions without concern that it will harm their accreditation status.

Additionally, some institutions would benefit from the changes related to State authorization in § 600.9 that generally maintain State reciprocity agreements for distance education and correspondence programs as an important method by which institutions may comply with State requirements and reduce the burden on institutions

that would otherwise be subject to numerous sets of varying requirements established by individual States. These final regulations allow religious institutions exempt from State authorization under § 600.9(b) to comply with requirements for distance education or correspondence courses by States in which the institution is not physically located through State authorization reciprocity agreements. The final regulations also make the administration of distance education programs more efficient by replacing the concept of a student's residence with that of the student's location. As noted in the State Authorization section of this preamble, residency requirements may differ within States for purposes of voting, paying in-State tuition, and other rights and responsibilities. By using a student's location instead of residence, the Department intends to make its regulations more consistent with existing State requirements, make it easier for institutions to administer, and ensure that students who have not established legal or permanent residence in a State benefit from State requirements for an institution to offer distance education and correspondence courses in that State. Finally, these final regulations remove the duplicative student complaint process requirements under current § 600.9(c)(2) as the regulations under § 668.43(b) already require institutions to disclose the complaint process in each of the States where its enrolled students are located.

Under the final regulations, institutions must make some new or revised disclosures to students and the Department, as shown in the *Paperwork Reduction Act* section of this preamble. Institutions will be required to (1) update their policies and procedures to ensure consistent determination of a student's location for distance education and correspondence course students, and, upon request, to provide written documentation from the policies and procedure manual of its method and basis for such determinations to the Secretary; (2) inform the Secretary of the establishment of direct assessment programs after the first; (3) inform the Secretary of written arrangements for an ineligible program to provide more than 25 percent of a program; and (4) provide disclosures to students about whether programs meet licensure requirements, acceptance of transfer credits, policies on prior learning assessment, and written arrangements for another entity to provide all or part of a program. We estimate the cost of these disclosures to institutions will be a burden increase of 581,980 hours annually, totaling

\$26,398,613 (581,980 * \$45.36). This wage is based on the 2018 median hourly wage for postsecondary education administrators in the Bureau of Labor Statistics Occupational Outlook handbook.³⁹

While institutions will incur some increased costs for these disclosures and notifications, we do think there will be time and cost savings from the consolidation of reporting requirements and several provisions in these final regulations. The final regulatory package will remove the current regulatory requirements in § 668.50. This removes seven public disclosures that institutions offering distance education or correspondence courses were required to provide to students enrolled or seeking enrollment in such programs. Several of these disclosures will be required under § 668.43 and are included in the \$26 million in burden described previously.

As detailed in the *Paperwork Reduction Act* section of this preamble, we expect these consolidations to save 152,405 hours for a total estimated reduction in burden of \$6,913,091 at the hourly wage of \$45.36 described above. Together, we estimate the expected net impact of the changes to disclosures to be an increase of 429,575 hours totaling \$19,485,522 at the hourly wage of \$45.36. The changes to the substantive change requirements may reduce the time and expense to institutions by streamlining approval of institutional or programmatic changes by dividing them into those that the agency must approve and those the institution must simply report to the agency, and also by permitting some changes to be approved by accrediting agency senior staff rather than by the entire accrediting commission, as well as by setting deadlines for agency approvals of written arrangements.

Students

As discussed earlier, these final regulations will provide various benefits to students by improving access to higher education and mobility and promoting innovative ways for employers to partner with accrediting agencies in establishing appropriate quality standards that focus on clear expectations for success. The final regulations may make it easier for students to transfer credits to continue, or attain an additional degree, at a new institution, including students from

proprietary institutions seeking additional education at four-year public or private nonprofit institutions. If institutions are better able to work with employers or communities to set up programs that efficiently respond to local needs, students could benefit from programs designed for specific in-demand skills. Students would have to consider if choosing a program in a preaccreditation status or one that takes an innovative approach provides a high-quality opportunity. The Department believes programs added in response to these final regulations will maintain the quality of current offerings because institutions are still required to obtain accrediting agency approval when they want to add programs that represent a significant departure from the existing offerings or educational programs, or method of delivery, from those that were offered when the agency last evaluated the institution and when they want to add graduate programs. Lower-level programs that are related to what they are already offering are expected to leverage the strengths of the existing programs.

The Department does not believe many students rely on the distinction between regional and national accrediting agencies when deciding between programs or institutions but instead base their choice on other factors such as location, cost, programs offerings, campus, and career opportunities. Therefore, we do not think there are costs to students from the change to institutional versus regional accreditation, especially since institutions will be allowed to use whatever terms accurately reflect their accreditation to the extent it is useful for informing the audience of particular communications.

Additionally, if the accreditation market transforms over time and certain agencies develop strong reputations in specialized areas over time, that may be more informative for students interested in those outcomes.

Students may also be affected by the provisions related to the definition of a religious mission and the ability of institutions to have policies that support their religious mission without it being a negative factor in the institution's accreditation review. Institutions should be clear in their religious mission statements and students should evaluate if that mission is consistent with their beliefs or if they are willing to attend an institution with those policies and perspectives. For some students, this may limit the options in a given commuting range or lead them to attend an institution whose religious mission they do not share.

³⁹ Bureau of Labor Statistics, U.S. Department of Labor, *Occupational Outlook Handbook*, Postsecondary Education Administrators, available at www.bls.gov/ooh/management/postsecondary-education-administrators.htm (visited May 21, 2019).

The changes to the institutional disclosures in these final regulations are also aimed at simplifying the disclosures and providing students more useful information. As detailed in the Disclosures section of the NPRM, these final regulations require disclosures to ensure that an institution provides adequate information for students to understand its transfer-of-credit policy, especially when that policy excludes credits from certain types of institutions. The Department also believes that disclosures relating to an institution's prior learning assessment policies are important to students, especially those who have not attended college before or who are returning to college after many years of experience or training in other fields. Students will also receive information about any written arrangements under which an entity other than the institution itself provides all or part of a program. Another key disclosure is whether the program meets educational requirements for licensure in the State in which the student is located. These final regulations about teach-out plans required by accrediting agencies and State actions are intended to ensure that students have clear information about serious problems at their institutions, and this is most likely to occur when those institutions are required to have a teach-out plan in place or are under investigation by a State or other agency.

Under these final regulations, in certain circumstances, such as when an accrediting agency places an institution on probation, the Department changes the institution to reimbursement payment method, or the institution receives an auditor's adverse opinion, an accrediting agency must require a teach-out plan to facilitate the opportunity for students to complete their academic program. A closing institution will also trigger a required teach-out opportunity. For students, this could enable them to complete a credential with less burden associated with transferring credits and finding a new program. Alternatively, they will have the option to choose a closed school discharge if it makes sense for their situation. The additional flexibility under these final regulations for accrediting agencies to sanction programs instead of entire institutions potentially creates a trade-off as the students in programs that close are not eligible for closed school discharges. However, by focusing on problematic programs, fewer institutions may close precipitously, and fewer students would have their programs disrupted.

Federal Government

Under these final regulations, the Federal government would incur some additional administrative costs.

We do not expect the costs associated with processing post-participation disbursements to be significant, as the disbursement system is well-established and designed to accommodate fluctuations in disbursements. A file review at the agency would be incorporated into the review of agency applications. Currently, the Department reviews approximately 10 accrediting agencies for initial or renewal applications annually and we expect a file review will take Department staff 6 hours at a GS-14 Step 1 hourly wage rate of \$43.42. The potential increase in the number of reviews due to these final regulations is uncertain, but we estimate a cost of \$261 per review (6 hours * \$43.42). Additional costs may also arise from increased senior Department official reviews under proposed § 602.36(g), which provides an agency subject to a determination that a decision to deny, limit, or suspend recognition may be warranted with an opportunity to submit a written response and documentation addressing the finding, and the staff with an opportunity to present its analysis in writing. The Department has reviewed 17 compliance reports between 2014 and 2018; we do not expect the administrative burden on the Department from this provision to be significant.

The Federal government will benefit from savings due to a reduced number of closed school loan discharges as a result of an expected increase in students completing teach-outs, but it may also incur annual costs to fund more Pell Grants and some title IV loans for students participating in teach-outs and increased volume from new programs or extension of existing programs, as discussed in the *Net Budget Impacts* section.

Net Budget Impacts

We estimate that these final regulations will have a net Federal budget impact over the 2020–2029 loan cohorts of \$35 million in outlays in the primary estimate scenario and an increase in Pell Grant outlays of \$3,744 million over 10 years, for a total net impact of \$3,779 million. A cohort reflects all loans originated in a given fiscal year. Consistent with the requirements of the Credit Reform Act of 1990, budget cost estimates for the student loan programs reflect the estimated net present value of all future non-administrative Federal costs

associated with a cohort of loans. The Net Budget Impact is compared to a modified version of the 2020 President's Budget baseline (PB2020) that adjusts for the recent publication of the final Borrower Defense rule.

As the Department recognizes that the market transformations that could occur in connection with these final regulations are uncertain and we have limited data on which to base estimates of accrediting agency, institutional, and student responses to the regulatory changes, we present alternative scenarios to capture the potential range of impacts on Federal student aid transfers. An additional complicating factor in developing these estimates are the related regulatory changes on which the committee reached consensus in this negotiated rulemaking that we will propose in separate notices of proposed rulemaking. For example, we will address the potential expansion of distance education or direct assessment programs because of significant proposed changes in the regulations governing such programs in a separate notice of proposed rulemaking. In this analysis, we address the impact of the accreditation changes and other changes in these final regulations but recognize that attributing future changes in the Federal student aid disbursements to provisions that have overlapping effects is an inexact process. Therefore, in future proposed regulations, as appropriate, we will consider interactive effects related to the changes in these regulations.

The main budget impacts estimated from these final regulations come from changes in loan volumes and Pell Grants disbursed to students as establishing a program becomes less burdensome and additional students receive title IV, HEA funds for teach-outs. Changes that could allow volume increases include making it easier for the Department to recognize new accrediting agencies and reducing the experience requirement for expanding an agency's scope to new degree levels. Agencies will also be able to establish alternative standards that require the institution or program to demonstrate a need for the alternative approach, as long as the alternative will not harm students and that they will receive equivalent benefit. The alternative standard could allow for the faster introduction of innovative programs. The possibility of additional accrediting agencies would increase the chances for institutions to find an agency. Institutions' liability associated with acquiring additional locations and expanded time to come into compliance could also keep programs operating longer than they otherwise might. The

tables below present the assumed grant and loan volume changes used in

estimating the net budget impact of these final regulations for the primary

scenario, with discussion about the assumptions following the tables.

TABLE 2A—ASSUMPTIONS ABOUT CHANGE IN PELL GRANTS BY AWARD YEAR
[Additional Pell recipients]

	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029
4-year public	0	8,845	15,075	30,789	39,292	48,153	57,375	66,980	68,903	70,333
2-year public	0	6,790	11,624	17,891	24,469	31,395	38,633	46,219	47,710	48,933
4-year private	0	3,252	5,514	11,215	14,272	17,456	20,806	24,230	24,869	25,369
2-year private	0	163	281	433	597	772	956	1,155	1,193	1,235
Proprietary	0	4,988	10,266	15,832	21,691	25,102	28,679	32,454	33,612	34,570
Total		24,038	42,760	76,161	100,321	122,879	146,450	171,037	176,288	180,441

Estimated program costs for Pell Grants range from \$30.1 billion in AY 2021–22 to \$37.2 billion in AY 2029–30, with a 10-year total estimate of \$333.8 billion. On average, the FY 2020 President's Budget projects a baseline increase in Pell Grant recipients from 2020 to 2029 of approximately 200,000

annually. The increase in Pell Grant recipients estimated due to these final regulations ranges from about 12 percent in 2021 to approximately 90 percent by 2029 of the projected average annual increase that would otherwise occur. However, even the additional 180,441 recipients estimated for 2029

would account for approximately 2 percent of all estimated Pell recipients in 2029 and results in an increase in program costs of approximately \$4,427 million, a 1.3 percent increase in estimated 10-year Pell Grant program costs of \$333.8 billion.

TABLE 2B—ASSUMPTIONS ABOUT CHANGE IN LOAN VOLUME FROM FINAL REGULATIONS BY COHORT AND RISK-GROUP

	PB2020 vol est (subsidized and unsubsidized)	Percent change in loan volume by risk group and cohort—subsidized and unsubsidized loans									
	FY2020 (\$mns)	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029
Proprietary	2,774	0	0.5	1	1.5	2	3	4	5	5	5
2-Year Non-Profit	4,981	0	0.3	0.5	0.75	1	1.25	1.5	2	2.25	2.5
4-Year Fr/So	17,118	0	0.3	0.5	1	1	1.5	2	2.75	3.5	4
4-Year Jr/Sr	20,063	0	0.3	0.5	1	1	1.5	2	2.75	3.5	4
Grads	50,734	0	0	–0.2	–0.2	–0.2	–0.2	–0.3	–0.3	–0.3	–0.3
	PB2020 vol est (PLUS)	Percent change in loan volume by risk group and cohort—PLUS loans									
	FY2020 (\$mns)	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029
Proprietary	356	0	0.25	0.5	0.75	1	1.5	2	2.5	2.5	2.5
2-Year Non-Profit	133	0	0.15	0.25	0.375	0.5	0.625	0.75	1	1.125	1.25
4-Year Fr/So	8,003	0	0.15	0.25	0.5	0.5	0.75	1	1.375	1.75	2
4-Year Jr/Sr	5,713	0	0.15	0.25	0.5	0.5	0.75	1	1.375	1.75	2
Grads	11,888	0	0	–0.2	–0.2	–0.2	–0.2	–0.3	–0.3	–0.3	–0.3

As seen from the approximately \$100 billion annual loan volume, even small changes will result in a significant amount of additional loan transfers. We update loan volume estimates regularly; for PB2020 the total non-consolidated loan volume estimates between FY2020 and FY2029 range from \$100.2 billion to \$116.1 billion. The additional high and low scenarios represent a 20 percent increase or decrease from the assumptions presented in the table. The Department does not anticipate that the changes in the final regulations will lead to widely different scenarios for volume growth and therefore believes the 20 percent range captures the likeliest outcomes. For the provisions aimed at reducing closed school discharges by enhancing teach-outs, the main assumption is that closed school discharges will decrease by 10 percent,

with a 20 percent decrease in the high scenario and a 5 percent decrease in the low scenario. With some exceptions, the Department has limited information about teach-outs and what motivates students to pursue them versus a closed school discharge, but we assume proximity to completion, convenience, and perception of the quality of the teach-out option have a substantial effect. Absent any evidence of the effect of the proposed changes on student response to teach-out plans, the Department has made a conservative assumption about the decrease in closed school discharges and the potential savings from the proposed changes may be higher.

However, since the publication of the NPRM describing the accreditation changes, the final Borrower Defense rule

was published on September 23, 2019⁴⁰ and reduced expected discharges as the elimination of automatic closed school discharges generated more savings than the extension of the closed school window to 180 days increased discharges. In order to avoid attributing savings in these final regulations for reductions in closed school discharges that would occur because of the borrower defense changes, the Department re-estimated the savings from this provision against the PB2020 baseline with the borrower defense closed school changes incorporated in it. Evaluated against this reduced level of expected future closed school discharges, the estimated savings from the closed school provision decreased

⁴⁰ 84 FR 49788 published September 23, 2019. Available at <https://www.govinfo.gov/content/pkg/FR-2019-09-23/pdf/2019-19309.pdf>.

from \$120 million in the main 10 percent reduction scenario to \$79 million.

The assumed changes in loan volume would result in a small cost that represents the net impact of offsetting subsidy changes by loan type and risk group due to positive subsidy rates for Subsidized and Unsubsidized Stafford loans and negative subsidy rates for Parent PLUS Loans and the interaction of the potential reduction in closed school discharges and increases in loan volume. The costs of the volume increase do differ from the NPRM as a result of the modified baseline that takes the final Borrower Defense rule into account as reduced discharge rates reduce subsidy costs. We do not assume any changes in subsidy rates from the potential creation of new programs or the other changes reflected in these final regulations. Depending on how programs are configured, the market demand for them, and their quality, key

subsidy components such as defaults, prepayments, and repayment plan choice may vary and affect the costs estimates. For example, if institutions with less favorable program outcomes find more lenient accrediting agencies or if they take advantage of the substantive change policy revisions to expand their program offerings, there could be an increase in default rates or other repayment issues. On the other hand, institutions with strong programs may take advantage of the flexibility allowed by the substantive change policy revisions to expand their program offerings, possibly by adding certificate programs. We do not have information at this point to assume that new programs established under these provisions would have a different range of performance from current programs or to estimate how performance could vary.

Table 3 summarizes the Pell and loan effects for the Low, Main, and High

impact scenarios over a 10-year period with years 2022 through 2029 showing amounts of over \$100 million in outlays per year. Each column reflects a low impact, medium impact, or high impact scenario showing estimated changes to Pell Grants and Direct Loans under those low, medium, and high conditions. Therefore, the overall amounts reflect the sum of outlay changes occurring under each scenario for Pell Grants and Direct Loans when combined. The loan amounts reflect the combined change in the volumes and closed school discharges, which do have interactive and offsetting effects. For example, the closed school changes had estimated savings ranging from \$41 million to \$164 million when evaluated without the volume changes, and the volume changes had costs of \$81 million to \$139 million when estimated without the closed school changes.

TABLE 3—ESTIMATED NET IMPACT OF PELL GRANT AND LOAN CHANGES—2020–2029 OUTLAYS
[\$mns]

	Low	Main	High
Pell Grants	2,981	3,744	4,463
Loans	40	35	–25
Overall	3,021	3,779	4,438

When considering the impact of these final regulations on Federal student aid programs, a key question is the extent to which the changes will expand the pool of students who will receive grants or borrow loans compared to the potential shifting of students and associated aid to different programs that may arise because of the changes in accreditation. The Department believes many of the final regulatory provisions that clarify definitions or reflect current practice will not lead to significant expansion of program offerings that would not otherwise occur for reasons related to institutions' business plans or academic mission. We believe these provisions may ease the burden of setting up new programs and accelerate the timeframe for offering them. Accreditation is a significant consideration when establishing a program because of the expense and work involved in seeking and maintaining it, but institutions make decisions about programs to offer based on employment needs, student demand, availability of faculty, and several other factors. Therefore, the Department does not expect these final regulations to increase total loan

volumes more than 2 percent or Pell Grant recipients more than 2 percent by 2029 compared to the FY 2020 President's Budget baseline.

Another factor reflected in Table 3 is that we do not expect the impacts of these final regulations to occur immediately upon implementation, but to be the result of changes in postsecondary education over time. Institutions generally undergo accreditation review every 7 to 10 years, depending upon the accrediting agency and their status. Additionally, accrediting agencies may develop a new focus area or geographic scope over time as they increase resources to expand their operations. To the extent that there is a change in the institutional accreditation landscape, we would not expect institutions to change agencies until their next review point, so the impacts of these final regulations will be gradual.

The changes to the substantive change requirements, which will allow institutions to respond quickly to market demand and create undergraduate programs at different credential levels and focus agency attention on the creation of graduate

certificate and masters level programs where many loan dollars are directed, could lead to expansion in Federal aid disbursed. The increased volume change of the high scenario reflects uncertainty about the extent of this potential expansion, as well as the fact that much of the expansion may involve online programs subject to forthcoming proposed regulatory changes that would interact with these final regulations. The number of graduate programs awarding credentials has increased substantially since the introduction of graduate PLUS loans in 2006, as has the volume of loans disbursed to graduate borrowers, as shown in Table 5. These final regulations will not change the substantive change requirements for graduate programs. This emphasis reflects the Department's concern about the growing practice of elevating the level of the credential required to satisfy occupational licensure requirements. Focusing accrediting agency attention on graduate programs may slow down or prevent the creation of some new programs, which we reflect in the slight reduction in graduate loan volume in Table 2.

TABLE 4 ⁴¹—PROGRAMS AWARDING CREDENTIALS AND CREDENTIALS AWARDED IN SELECTED YEARS 2006–2017

	Programs				Awards			
	2006	2010	2013	2017	2006	2010	2013	2017
Undergraduate Certificates	50,960	58,870	60,440	64,490	1,461,460	734,880	1,987,740	1,919,950
Public 4 year	1,890	3,130	4,160	7,970	30,740	34,840	104,860	196,790
Private 4 year	1,810	2,280	2,490	2,810	21,640	9,990	27,320	27,720
Prop 4 year	950	1,550	2,150	1,820	30,220	13,680	61,200	61,470
Public 2 year or less	33,570	37,250	36,740	39,020	713,690	409,720	986,440	1,064,240
Private 2 year or less	1,290	1,050	1,010	890	58,490	22,350	41,920	40,030
Prop 2 year or less	11,440	13,620	13,900	11,990	606,670	244,290	766,010	529,700
+Undergraduate Degrees	136,190	149,840	161,220	168,980	4,596,970	2,144,470	5,942,860	6,164,090
Public 4 year	40,000	42,670	46,770	55,080	2,126,290	1,036,150	2,709,700	3,048,600
Private 4 year	57,240	61,950	67,070	71,550	1,101,850	488,020	1,289,280	1,349,090
Prop 4 year	4,680	9,460	11,270	7,170	202,920	159,620	519,650	342,520
Public 2 year or less	30,280	31,590	31,880	32,320	1,029,930	413,450	1,282,000	1,343,570
Private 2 year or less	840	620	570	540	19,480	4,240	13,200	14,090
Prop 2 year or less	3,160	3,550	3,660	2,330	116,510	42,980	129,020	66,210
Graduate Certificates	5,580	7,530	9,920	13,280	74,870	33,990	74,870	74,870
Public 4 year	2,320	3,250	4,480	6,740	31,620	14,560	48,950	65,420
Private 4 year	3,000	4,000	4,780	5,860	40,830	17,770	48,450	51,400
Prop 4 year	260	280	650	680	2,400	1,660	7,420	7,990
Public 2 year or less .....	.....	.....	.....	.....	.....	.....	.....	.....
Private 2 year or less .....	.....	.....	.....	.....	.....	.....	.....	.....
Prop 2 year or less .....	.....	.....	.....	.....	20	.....	.....	.....
Graduate Degrees	44,370	47,970	51,820	59,980	1,465,180	712,760	1,875,660	1,993,430
Public 4 year	24,850	25,850	27,370	32,250	731,320	335,760	870,070	935,950
Private 4 year	18,280	20,190	22,270	25,160	672,990	323,390	834,740	899,630
Prop 4 year	1,230	1,920	2,180	2,580	60,880	53,610	170,840	157,850
Public 2 year or less .....	.....	.....	.....	.....	.....	.....	.....	.....
Private 2 year or less .....	.....	.....	.....	.....	.....	.....	.....	.....
Prop 2 year or less .....	.....	.....	.....	.....	.....	.....	.....	.....

TABLE 5 ⁴²—GRADUATE PLUS AND GRADUATE UNSUBSIDIZED LOANS DISBURSED TO STUDENTS IN SELECTED YEARS 2006–2017

	AY2005–06	AY2009–10	AY2012–13		AY2016–17	
	Grad PLUS	Grad PLUS	Grad PLUS	Grad unsub	Grad PLUS	Grad unsub
Public	12,793,910	1,276,149,977	1,838,645,436	10,232,321,388	2,444,408,219	10,584,552,835
Private	59,288,547	3,909,981,128	4,934,939,609	12,629,730,564	6,094,281,420	13,030,559,389
Proprietary	4,000,483	575,779,471	830,210,361	3,967,504,952	1,106,645,769	3,410,171,851
Total	76,082,940	5,761,910,576	7,603,795,406	26,829,556,904	9,645,335,408	27,025,284,075

Note: Unsubsidized loans to graduate students not included as not split in volume reports until 2010–11.

These final regulations also aim to bring greater clarity to the nature of teach-outs and to create a more orderly process for students and institutions when institutions are closing precipitously. We seek through these final regulations to provide students with the opportunity to finish their program of study and attain their credential and keep closed school discharges to a minimum to reduce taxpayer cost.

These final regulations will permit an accrediting agency to sanction a specific program or location within an institution without acting against the entire institution if the agency found that only that program or location was

noncompliant. The Department recognizes that this situation would preclude a student from obtaining a closed school discharge, since only a program was subject to closure and not the entire institution. However, accrediting agency actions have rarely been the sole cause of institutional closure, so the potential application of this more limited response may not change the level of closed school discharges significantly.

Nevertheless, students would be entitled to teach-outs that facilitate program completion and degree attainment. In turn, the expansion of teach-outs could have budgetary impacts related to financial aid amounts as students take out loans or grants to

complete their programs. When participating in a teach-out, the receiving institution may not charge students more than what the closing or closed institution would have charged for the same courses. If teach-outs increase significantly, this could result in some increase in loan volume and Pell Grants to such students. Closed school discharges are a very small percent of cohort volume, so we do not expect the potential volume increase associated with increased teach-outs ranges to be substantial or to contribute to the volume increases presented in Table 2.

⁴¹ U.S. Department of Education analysis of IPEDS completion data for 2006, 2010, 2013, and

2017. Available at <https://nces.ed.gov/ipeds/datacenter/DataFiles.aspx>.

⁴² FSA Data Center loan volume files available at <https://studentaid.ed.gov/sa/about/data-center/student/title-iv>.

Accounting Statement

As required by OMB Circular A-4 (available at www.whitehouse.gov/sites/default/files/omb/assets/omb/circulars/a004/a-4.pdf), in the following table we

have prepared an accounting statement showing the classification of the expenditures associated with the provisions of these final regulations. This table provides our best estimate of the changes in annual monetized

transfers as a result of these final regulations. Expenditures are classified as transfers from the Federal Government to affected student loan borrowers and Pell Grant recipients.

TABLE 6—ACCOUNTING STATEMENT: CLASSIFICATION OF ESTIMATED EXPENDITURES
[In millions]

Category	Benefits	
Restored focus and clarity for accrediting agency recognition process	Not Quantified	
	Not Quantified	
Category	Costs	
	7%	3%
Cost of compliance with paperwork requirements	\$20.1	\$20.1
Category	Transfers	
	7%	3%
Increased Pell Grants transferred to students who enter postsecondary education because of programs established or that remain open because of accreditation changes or who participate in teach-outs	\$323.2	\$351.9
Change in transfers from increased Federal student loans transferred to students who enter postsecondary education because of programs established or that remain open because of accreditation changes or who participate in teach-outs and reduced closed school discharges from the Federal Government to affected borrowers	1.9	2.2

Regulatory Alternatives Considered

In the interest of ensuring that these final regulations produce the best possible outcome, we considered a broad range of proposals from internal sources as well as from non-Federal negotiators and members of the public as part of the negotiated rulemaking process. We reviewed these alternatives in detail in the preamble to the NPRM under the “Reasons” sections accompanying the discussion of each proposed regulatory provision. Among the items discussed was removing or revising the limit on how much of a program a non-accredited entity may offer, which could allow faster expansion of programs but raised concerns about maintaining program quality. Also, a variety of alternatives to the proposed elimination of the requirement that an agency must have conducted accrediting activities for at least two years prior to seeking recognition when the agency is affiliated with, or is a division of, a recognized agency were considered by the negotiating committee. The committee did not agree to a proposal to make all regional accrediting agencies national but did agree to using the institutional designation for Department business. The committee also considered stricter requirements for obtaining approval of graduate programs. These proposals would likely have had a stronger

negative effect on graduate program creation than these final regulations.

Paperwork Reduction Act of 1995

As part of its continuing effort to reduce paperwork and respondent burden, the Department provides the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)). This helps ensure that: The public understands the Department’s collection instructions, respondents can provide the requested data in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the Department can properly assess the impact of collection requirements on respondents.

Sections 600, 602, and 668 contain information collection requirements. Under the PRA the Department has submitted a copy of these sections to OMB for its review.

A Federal agency may not conduct or sponsor a collection of information unless OMB approves the collection under the PRA and the corresponding information collection instrument displays a currently valid OMB control number.

Notwithstanding any other provision of law, no person is required to comply with, or is subject to penalty for failure

to comply with, a collection of information if the collection instrument does not display a currently valid OMB control number.

In these final regulations, we display the control numbers assigned by OMB to any information collection requirements adopted in the final regulations. In the case of a new information collection, the OMB control number will be issued upon the information collection request approval.

Discussion

The goal of accreditation is to ensure that institutions of higher education meet acceptable levels of quality. Accreditation in the United States involves non-governmental entities as well as Federal and State government agencies. Accreditation’s quality assurance function is one of the three main elements of oversight governing the HEA’s Federal student aid programs. In order for students to receive Federal student aid from the Department for postsecondary study, the institution must be accredited by a “nationally recognized” accrediting agency (or, for certain vocational institutions, approved by a recognized State approval agency), be authorized by the State in which the institution is located, and receive approval from the Department through a program participation agreement.

Accrediting agencies, which are private educational associations

operating in multiple states or with national scope, develop evaluation criteria and conduct peer evaluations to assess whether institutions and programs meet those criteria. Institutions and programs that request an accrediting agency's evaluation and that meet that agency's criteria are then "accredited."

As of April 2019, the Secretary recognized 53 accrediting agencies that are independent, membership-based organizations designed to ensure students have access to qualified faculty, appropriate curriculum, and other support services. Of these 53 accrediting agencies recognized by the Secretary, 36 are institutional for title IV HEA purposes and 18 are solely programmatic. Institutional accrediting agencies accredit institutions of higher education, and programmatic accrediting agencies accredit specific educational programs that prepare students for entry into a profession, occupation, or vocation. The PRA section will use these figures in assessing burden. Additionally, we use the number of title IV eligible

institutions noted in the Regulatory Impact Analysis (1,860 public institutions, 1,704 private institutions, and 1,783 proprietary institutions) as the basis for assessing institutional burden in the PRA.

Through this process we identified areas where cost savings will likely occur under the final regulations; however, many of the associated criteria do not have existing information collection requests and consequently we did not then assign OMB numbers for data collection purposes. Instead, we included them in the collections table in a column titled: "Estimated savings absent ICR requirement," and they are sometimes referred to as "hours saved." We did not include these areas of anticipated costs savings in the total burden calculations.

Section 600.9—State Authorization Requirements

Under § 600.9(c)(2)(i), the institution must determine in which State a student is located while enrolled in a distance education or correspondence course when the institution participates in a

State authorization reciprocity agreement under which it is covered in accordance with the institution's policies and procedures. The institution must make such determinations consistently and apply them to all students.

Under § 600.9(c)(2)(ii), the institution must, upon request, provide the Secretary with written documentation of its determination of a student's location, including the basis for such determination.

Burden Calculation

We estimate that, on average, an institution will need 30 minutes to update its policies and procedures manual to ensure consistent location determinations for distance education and correspondence course students. Additionally, we estimate that it will take an institution 30 minutes to provide the Secretary, upon request, with written documentation from its policies and procedures manual of its method of determination of a student's location, including the basis for such determination.

TABLE 7—§ 600.9(c)(2)(i)

Entity	Responses	Time per response	Total hours
Public	1,860	.5 hours (30 min.)	= 930
Private	1,704	.5 hours (30 min.)	= 852
Proprietary	1,783	.5 hours (30 min.)	= 892
			= 2,674

We estimate that no more than five percent of institutions will be required to provide written documentation to the Secretary regarding the basis for the institutions' determinations of a State location for a student. We estimate that 93 public institutions will require 47

hours to provide written documentation of their basis for a location determination for a student as requested by the Secretary. We estimate that 85 private institutions will require 43 hours to provide written documentation of their basis for a location

determination for a student as requested by the Secretary. We estimate that 89 proprietary institutions will require 45 hours to provide written documentation of their basis for a location determination for a student as requested by the Secretary.

TABLE 8—§ 600.9(c)(2)(ii)

Entity	Responses	Time per response	Total hours
Public	1,860	5% × .5 hours (30 min.)	= 47
Private	1,704	5% × .5 hours (30 min.)	= 43
Proprietary	1,783	5% × .5 hours (30 min.)	= 45
			= 135

The estimated burden for § 600.9 is 2,809 hours under OMB Control Number 1845–0144. The estimated institutional cost is \$127,416 based on \$45.36 per hour for Postsecondary Education Administrators, from the 2019 Bureau of Labor Statistics Occupational Outlook Handbook.

Section 602.12—Accrediting Experience Requirements

The Department will require under § 602.12(b)(1) that an accrediting agency notify the Department of its geographic expansion and to publicly disclose it on its website.

Burden Calculation

Under § 602.12(b)(1), we estimate that, on average, it will take an agency 1 hour to inform the Department that it has expanded its geographic scope and to disclose the information publicly on its website. However, overall burden will decrease because an agency will no longer need to request approval of such

an expansion by the Department, which takes, on average, 20 hours. The Department has received, on average, one such request annually.

The estimated burden under § 602.12 will increase by 1 hour [1×1] under OMB Control Number 1840–0788. In addition, in absence of an ICR for expansion of scope, we estimate, on average, burden reduction under § 602.12 will be 19 hours [$1 \times (20 - 1)$] under OMB Control Number 1840–0788. The estimated institutional cost is \$45.36 based on \$45.36 per hour for Postsecondary Education Administrators, from the 2019 Bureau of Labor Statistics Occupational Outlook Handbook.

Section 602.18—Ensuring Consistency in Decision-Making; Section 602.20—Enforcement of Standards; Section 602.22—Substantive Changes and Other Reporting; Section 602.23—Operating Procedures All Agencies Must Have; Section 602.24—Additional Procedures Certain Institutional Agencies Must Have; and Section 602.26—Notifications of Accrediting Decisions: All Related to Final Accreditation Agency Policy Changes

Requirements

Under § 602.18(a)(6), we will require that accrediting agencies publish any policies for retroactive application of an accreditation decision. The policies must not provide for an effective date that predates an earlier denial by the agency of accreditation or preaccreditation to the institution or program or the agency's formal approval of the institution or program for consideration in the agency's accreditation or preaccreditation process.

Under § 602.20(a)(2), we will require that accrediting agencies provide institutions or programs with written timelines for coming into compliance, which may include intermediate checkpoints as the institutions progress to full compliance.

Under § 602.20(b), we will require that accrediting agencies have a policy for taking immediate adverse action when warranted. We will require both changes to remove overly prescriptive timelines for accrediting agencies that will emphasize acting in the best interest of students rather than merely acting swiftly.

Under § 602.20(d), we will add that accrediting agencies could limit adverse actions to specific programs or

additional locations without taking action against the entire institution. This change will provide accrediting agencies with more tools to hold programs or locations within institutions accountable.

The Department will revise substantive change regulations to provide accrediting agencies more flexibility to focus on the most important changes. Under § 602.22(a)(3)(i), we will allow accrediting agencies' decision-making bodies to designate agency senior staff members to approve or disapprove certain substantive changes. Under § 602.22(a)(3)(ii), we will allow a 90-day timeframe (180 days for those with significant circumstances) for accrediting agencies to make final decisions about substantive changes involving written arrangements for provision of 25 to 50 percent of a program by a non-eligible entity. Under § 602.22(b), we will add two additional substantive changes for which an institution placed on probation or equivalent status must receive prior approval and for which other institutions must provide notice to the accrediting agency. Under § 602.23(f)(1)(ii), agencies must require that all preaccredited institutions have a teach-out plan that ensures students completing the teach-out will meet curricular requirements for professional licensure or certification, if any. Further, the teach-out plan must include a list of academic programs offered by the institution, as well as the names of other institutions that offer similar programs and that could potentially enter into a teach-out agreement with the institution.

Under final § 602.24(a), agencies are no longer required to use an institution's business plan, submitted to the Department, to describe the operation, management, and physical resources of the branch campus and remove the requirement that an agency may only extend accreditation to a branch campus after the agency evaluates the business plan and takes whatever other actions it deems necessary to determine that the branch campus has enough educational, financial, operational, management, and physical resources to meet the agency's standards.

Under § 602.24(c), we will require new requirements for teach-out plans and teach-out agreements. These changes will add additional specificity

and clarity to teach-out plans and agreements and new provisions regarding when they will be required, what they must include, and what accrediting agencies must consider before approving them.

Under § 602.24(f), we will require that agencies adopt and apply the definitions of "branch campus" and "additional location" in 34 CFR 600.2, and on the Secretary's request, conform its designations of an institution's branch campuses and additional locations with the Secretary's if it learns its designations diverge. This change will standardize the use of these terms and alleviate misunderstandings.

Under § 602.26(b), we will require that accrediting agencies provide written notice of a final decision of a probation or equivalent status, or an initiated adverse action to the Secretary, the appropriate State licensing or authorizing agency, and the appropriate accrediting agencies at the same time it notifies the institution or program of the decision.

Further, we will require the institution or program to disclose such an action within seven business days of receipt to all current and prospective students.

Burden Calculation

Under § 602.18(a)(6), § 602.20(a)(2), § 602.20(b), § 602.20(d), § 602.22(a)(3)(i), § 602.22(a)(3)(ii), § 602.22(b), § 602.23(f)(1)(ii), § 602.24(a), § 602.24(c), § 602.24(f), and § 602.26(b), we estimate that, on average, an agency will need 12 hours to develop policies regarding submitting written documentation to the Secretary, which includes obtaining approval from its decision-making bodies, updating its policies and procedures manual, distributing the new policies to its institutions, and training agency volunteers on the changes.

Collectively, the one-time estimated burden for § 602.18(a)(6), § 602.20(a)(2), § 602.20(b), § 602.20(d), § 602.22(a)(3)(i), § 602.22(a)(3)(ii), § 602.22(b), § 602.23(f)(1)(ii), § 602.24(a), § 602.24(c), § 602.24(f), and § 602.26(b), is 636 hours (53×12) under OMB Control Number 1840–0788. The estimated institutional cost is \$28,849 based on \$45.36 per hour for Postsecondary Education Administrators, from the 2019 Bureau of Labor Statistics Occupational Outlook Handbook.

TABLE 9—SUMMARY OF ACCREDITING AGENCY POLICY MANUAL CHANGES

Requirements	Hours	Number of agencies	Total burden
Write Policies	4	53	212
Obtain Approval	2	53	106
Update Manual	2	53	106
Distribute Policies	1	53	53
Train Volunteers	3	53	159
Total	12	53	636

Section 602.22—Substantive Changes and Other Reporting Requirements

Requirements

Under 602.22(a)(3)(i), for certain substantive changes, the agency's decision-making body may designate agency senior staff to approve or disapprove the request.

Burden Calculation

Although a formal ICR does not exist under §§ 602.22(a)(3)(i), we estimate that we will save time, on average, by 6 hours given that a designated agency staff member could approve or disapprove certain substantive changes in place of decision-making bodies.

The estimated amount of time saved under § 602.22(a)(3)(i) is 318 hours [53 × (−6)] under OMB Control Number 1840–0788. There is no estimated institutional cost under § 602.22(a)(3)(i), but we believe that there will be an overall savings of \$14,424.48 for agencies.

Section 602.23—Operating Procedures All Agencies Must Have

Requirements

Under § 602.23(a)(2), we will require that accrediting agencies make publicly available the procedures that institutions or programs must follow in applying for substantive changes. While we are aware that some agencies voluntarily make such procedures publicly available, we will now require it. Further, we will require that the agencies make publicly available the sequencing of steps relative to any applications or decisions required by States or the Department relative to the agency's preaccreditation, accreditation or substantive change decisions.

Burden Calculation

Under § 602.23(a)(2), we estimate that, on average, it will take an agency a one-time effort of 2 hours to make its application procedures publicly

available. We anticipate that accrediting agencies will use their websites to comply, but any reasonable method is acceptable if the information is available to the public.

The estimated one-time burden for § 602.23 is 106 hours (53 × 2) under OMB Control Number 1840–0788. The estimated institutional cost is \$4,808 based on \$45.36 per hour for Postsecondary Education Administrators, from the 2019 Bureau of Labor Statistics Occupational Outlook Handbook.

Section 602.24—Additional Procedures Certain Institutional Agencies Must Have

Requirements

Under final § 602.24(a), agencies will not have to require an institution's business plan, submitted to the Department, to describe the operation, management, and physical resources of the branch campus and we will remove the requirement that an agency may only extend accreditation to a branch campus after the agency evaluates the business plan and takes whatever other actions it deems necessary to determine that the branch campus has enough educational, financial, operational, management, and physical resources to meet the agency's standards. Final § 602.24(c) will establish new requirements for teach-out plans and teach-out agreements, including when an agency must require them and what elements the agency must include.

Final § 602.24(f) will remove the requirement that an agency conduct an effective review and evaluation of the reliability and accuracy of the institution's assignment of credit hours.

Burden Calculation

We believe the requirements under § 602.24 that we are deleting are unnecessarily prescriptive and administratively burdensome without adding significant assurance that the

agency review will result in improved accountability or protection for students or taxpayers.

Institutional accrediting agencies reviewed and extended accreditation to 53 branch campuses in 2018; and 26 to date in 2019. Given these figures, we estimate that under final § 602.24(a), an agency will save, on average, three hours [(2 hours × 53 business plans = 106)/36 institutional accrediting agencies = 3 hours] not reviewing business plans for branch campus applications. Under § 602.24(c), we estimate that an agency will need, on average, an additional hour to review the extra requirements for teach-out plans and teach-out agreements of their Title IV gatekeeping institutions (1 hour × 5,347 institutions).

Accrediting agencies review their institutions at different intervals with a maximum of 10 years. Using a five-year interval as a "mean," agencies will review and evaluate credit hours of 5,347 Title IV gatekeeping institutions every five years. Under § 602.24(f), we estimate that accrediting agencies have conducted the one-time review and evaluation of 80 percent (4,277) of their institutions' credit hours given the requirement became effective eight years ago (2011) leaving, no more than likely, 20 percent (1,070) of institutions' credit hours to be reviewed and evaluated.

Collectively, under § 602.24(a), (c), and (f), we estimate, on average, added burden of 5,347 hours (1 × 5,347); and 2,246 saved hours (106 + 2,140) if an ICR was associated with the final changes to lift required review of institutions' business plans and credit hours.

The estimated institutional cost is \$242,540 based on \$45.36 per hour for Postsecondary Education Administrators, from the 2019 Bureau of Labor Statistics Occupational Outlook Handbook.

TABLE 10—SUMMARY OF PROPOSED BURDEN AND HOURS SAVED FOR ADDITIONAL PROCEDURES CERTAIN INSTITUTIONAL AGENCIES MUST HAVE

Changes	Hours	Branch campus	Total burden	Hours saved
Business Plans—Applications	2	53	.....	106
Teach-out Plans & Agreements	1	5,347	5,347	.....
Credit Hours	2 ×	5,347 × 20	.....	2,140
Total	1	.....	5,347	2,246

Section 602.31—Agency Applications and Reports To Be Submitted to the Department

Requirements

Given the increased number of Freedom of Information Act (FOIA) requests, in § 602.31(f), we will require that accrediting agencies redact personally identifiable information and other sensitive information prior to sending documents to the Department to

help prevent public disclosure of that sensitive information.

Burden Calculation

In FY 2018, the Department closed 10 FOIA requests that were associated with accreditation. The estimated calculations are based on the time Department staff spent redacting PII, not the total time staff used to conduct searches and process the requests. Using the FY 2018 FOIA data related to accrediting agencies, we estimate that,

on average, it will take an agency 5.37 hours to comply with the final redaction requirements under § 602.31(f).

The estimated burden for § 602.31 is 285 hours $[(285 \text{ hours}/53 \text{ agencies}) = 5.37]$ under OMB Control Number 1840–0788. The estimated institutional cost is \$12,928 based on \$45.36 per hour for Postsecondary Education Administrators, from the 2019 Bureau of Labor Statistics Occupational Outlook Handbook.

TABLE 11—SUMMARY OF BURDEN FOR AGENCIES TO REDACT PII

	Hours	Cost per hour	Total cost burden	Per agency
Total	285	\$45.36	\$12,928	\$244

Section 602.32—Procedures for Applying for Recognition, Renewal of Recognition, or for Expansion of Scope, Compliance Reports, and Increases in Enrollment

Requirements

Under § 602.32(a), we will specify what accrediting agencies preparing for recognition renewal will submit to the Department 24 months prior to the date their current recognition expires.

Under § 602.32(j)(1), we will outline the process for an agency seeking an expansion of scope, either as a part of the regular renewal of recognition process or during a period of recognition.

Burden Calculation

Under § 602.32(a), we anticipate that, on average, it will take an agency 3 hours to gather, in conjunction with materials required by § 602.31(a), a list of all institutions or programs that the agency plans to consider for an award of initial or renewed accreditation over the next year or, if none, over the succeeding year, and any institutions subject to compliance reports or reporting requirements. Also, under § 602.32(j)(1), we anticipate that, on average, it will take an agency 20 hours to compose and submit a request for an expansion of scope of recognition.

Over the last five years, the Department has received fewer than five requests for expansion of scope.

The estimated burden for § 602.32 is 179 hours $(53 \times 3) + (1 \times 20)$ under OMB Control Number 1840–0788. The estimated institutional cost is \$8,119 based on \$45.36 per hour for Postsecondary Education Administrators, from the 2019 Bureau of Labor Statistics Occupational Outlook Handbook.

Section 602.36—Senior Department Official's Decision

Requirements

Under final § 602.36(f), the SDO will determine whether an agency is compliant or substantially compliant, which will give accrediting agencies opportunities to make minor modifications to reflect progress toward full compliance using periodic monitoring reports.

Burden Calculation

If we determine that an agency is substantially compliant, the SDO will allow the agency to submit periodic monitoring reports for review by Department staff in place of the currently used compliance report; the compliance report, requires a review by the NACIQI, attendance at one of its bi-

annual meetings, and conceivably comments filed with the SDO and an appeal to the Secretary. From 2014 through 2018, the Department reviewed 17 compliance reports. Under final § 602.36(f) these 17 compliance reports would have had the following designations: Five monitoring reports (one annually); two requiring both compliance and monitoring reports (less than one annually); and 10 (two annually) as compliance reports. Using data from our findings during reviews, we anticipate that final changes will reduce the burden on an agency.

If an accrediting agency is required to submit a monitoring report, we estimate that, on average, the final changes will save an agency 72 hours for travel and meeting attendance, given we will not require attendance at one of NACIQI's bi-annual meetings unless the agency does not address the initial areas of noncompliance satisfactorily through the use of monitoring reports. However, if we require an accrediting agency to submit both a monitoring report and a compliance report, we estimate that the final changes in § 602.36(f) will increase the burden for an accrediting agency by 8 hours as the agency completes its application for renewal of recognition by the Secretary.

We estimate that, on average, the burden for § 602.36 will increase 8 hours (1 × 8) under OMB Control Number 1840–0788. However,

considering the time saved for travel, we estimate (72 – 8 = 64) 64 saved hours overall. The estimated institutional cost is \$363 based on \$45.36 per hour for

Postsecondary Education Administrators, from the 2019 Bureau of Labor Statistics Occupational Outlook Handbook.

TABLE 12—SUMMARY OF BURDEN AND HOURS SAVED USING MONITORING REPORTS

Report type	Number	Hours	Total burden	Hours saved
Monitoring	1	72	.....	72
Monitoring and Compliance	1	8	8	.....

Section 668.26—End of an Institution's Participation in the Title IV, HEA Programs

Requirements

Under final § 668.26, the Secretary may permit an institution that has ended its participation in title IV programs to continue to originate, award, or disburse title IV funds for up to 120 days under specific circumstances. The institution must

notify the Secretary of its plans to conduct an orderly closure in accordance with its accrediting agency, teach out its students, agree to abide by the conditions of the program participation agreement in effect at the time of the loss of participation, and provide written assurances of the health and safety of the students, the adequate financial resources to complete the teach-out and the institution is not subject to adverse action by the

institution's State authorizing body or the accrediting agency.

Burden Calculation

We estimate that, on average, an institution will need 5 hours to draft, and finalize for the appropriate institutional management signature, the written request for extension of eligibility from the Secretary. We anticipate that 5 institutions may utilize this opportunity annually.

TABLE 13—§ 668.26

Respondent	Responses	Time per Response (hours)	Total hours
Public	1	5	= 5
Private	2	5	= 10
Proprietary	2	5	= 10
Total .....	.....	.....	= 25

The estimated burden for § 668.26 is 25 hours under OMB Control Number 1845–0156. The estimated institutional cost is \$1,134 based on \$45.36 per hour for Postsecondary Education Administrators, from the 2019 Bureau of Labor Statistics Occupational Outlook Handbook.

Section 668.43—Institutional Information

Requirements

The final regulations in § 668.43(a)(5) will require an institution to disclose whether the program will fulfill educational requirements for licensure or certification if the program is designed to or advertised as meeting such requirements. Institutions will be required to disclose, for each State, whether the program did or did not meet such requirements, or whether the institution had not made such a determination.

The final regulations in § 668.43(a)(11) will revise the information about an institution's transfer of credit policies to require the disclosure of any types of institutions from which the institution will not

accept transfer credits. Institutions will also be required to disclose any written criteria used to evaluate and award credit for prior learning experience.

The final regulations in § 668.43(a)(12) will require institutions to provide disclosures in the program description regarding written arrangements under which an entity other than the institution itself provides all or part of a program.

The final regulations will add disclosure requirements that are in statute but not reflected fully in the regulations as well as new disclosure requirements. These disclosures will include: In § 668.43(a)(13), the percentage of the institution's enrolled students disaggregated by gender, race, ethnicity, and those who are Pell Grant recipients; in § 668.43(a)(14) placement in employment of, and types of employment obtained by, graduates of the institution's degree or certificate programs; in § 668.43(a)(15) the types of graduate and professional education in which graduates of the institution's four-year degree programs enrolled; in § 668.43(a)(16) the fire safety report prepared by the institution pursuant to § 668.49; in § 668.43(a)(17) the

retention rate of certificate- or degree-seeking, first-time, full-time, undergraduate students; and in § 668.43(a)(18) institutional policies regarding vaccinations.

The final regulations in § 668.43(a)(19) will require an institution to disclose to students if its accrediting agency requires it to maintain a teach-out plan under § 602.24(c)(1), and to indicate the reason why the accrediting agency required such a plan.

The final regulations in § 668.43(a)(20) will require that an institution must disclose enforcement actions or prosecutions by law enforcement agencies that, upon a final judgment, would result in an adverse action by an accrediting agency, revocation of State authorization, or suspension, limitation or termination of eligibility to participate in title IV. Investigations that have not progressed to pending enforcement actions or prosecutions need not be disclosed—regardless of their subject matter.

The final regulations will add a new paragraph (c) requiring an institution to make direct disclosures to individual students in certain circumstances.

Institutions will be required to disclose to a prospective student that the program in which they intended to enroll did not meet the educational requirements for licensure in the State in which the student was located, or if such a determination of whether the program met the licensure requirements in that State had not been made. We will also require an institution to make a similar disclosure to a student who was enrolled in a program previously meeting those requirements which ceased to meet the educational requirements for licensure in that State. The final regulations will hold the institutions responsible for establishing and consistently applying policies for determining the State in which each of its students is located. Such a determination will have to be made at the time of initial enrollment, and upon receipt of information from the student, in accordance with institutional policies, that his or her location had changed to another State. The final regulations require institutions to provide the Secretary, on request, with written documentation of its determination regarding a student's location.

Comments

Several commenters disagreed with the proposed estimated time in the

NPRM regarding the licensure and certification disclosure requirements as well as the estimated time to gather and complete the individualized disclosures. They felt that the proposed hours per institution was underestimating the time it would take an institution to research and maintain programmatic license or certification information.

Discussion

As we stated in the preamble, the Department does not require that an institution determine the licensure and certification requirements for their eligible programs for each State. If an institution does not make such a determination for each State, it can inform students that it has not made such a determination and comply with the regulations. The Department has not made an adjustment to the estimated burden hours.

Burden Calculation

We anticipate that most institutions will provide this disclosure information electronically on either the general institution website or individual program websites as required. Using data from the National Center for Educational Statistics, there were approximately 226,733 certificate and degree granting programs in 2017

identified for the public, private and proprietary sectors. Of those, public institutions offered 134,387 programs, private institutions offered 70,678 programs, and proprietary institutions offered 21,668 programs.

For § 668.43(a)(5)(v), we estimate that five percent or 11,337 of all programs will be designed for specific professional licenses or certifications required for employment in an occupation or is advertised as meeting such State requirements. We further estimate that it will take an institution an estimated 50 hours per program to research individual State requirements, determine program compatibility and provide a listing of the States where the program curriculum meets the State requirements, where it does not meet the State requirements, or list the States where no such determination has been made. We base this estimate on institutions electing not to research and report licensing requirements for States in which they had no enrollment or expressed interest. Additionally, we believe that some larger institutions and associations have gathered such data and have shared it with other institutions so there is less burden as they complete this research.

The estimated burden for § 668.43(a)(5)(v) will be 566,850 hours under OMB Control Number 1845–0156.

TABLE 14—§ 668.43(a)(5)(v)

Respondent	Responses	Time per response (hours)	Total hours
Public	6,719	50	= 335,950
Private	3,534	50	= 176,700
Proprietary	1,084	50	= 54,200
Total .....	.....	.....	= 566,850

For § 668.43(a)(11) through (20), we estimate that it will take institutions an average of 2 hours to research, develop

and post on institutional or programmatic websites the required information. The estimated burden for

§ 668.43(a)(13) through (20) will be 10,694 hours under OMB Control Number 1845–0156.

TABLE 15—§ 668.43(a)(11) THROUGH (20)

Respondent	Responses	Time per response (hours)	Total hours
Public	1,860	2	= 3,720
Private	1,704	2	= 3,408
Proprietary	1,783	2	= 3,566
Total .....	.....	.....	= 10,694

For § 668.43(c), we anticipate that institutions will provide this information electronically to prospective students regarding the

determination of a program's curriculum to meet State requirements for students located in that State or if no such determination has been made.

Likewise, we anticipate that institutions will provide this information electronically to enrolled students when a determination has been made that the

program's curriculum no longer meets State requirements. We estimate that institutions will take an average of 2 hours to develop the language for the individualized disclosures. We estimate

that it will take an additional average of 4 hours for the institutions to disclose this information to prospective and enrolled students for a total of 6 hour of burden. We estimate that five percent of

the institutions will meet the criteria to require these disclosures. The estimated burden for § 668.43(c) will be 1,602 hours under OMB Control Number 1845–0156.

TABLE 16—§ 668.43(c)

Respondent	Responses	Time per response (hours)	Total hours
Public	1,860 × 5% = 93	6	= 558
Private	1,704 × 5% = 85	6	= 510
Proprietary	1,783 × 5% = 89	6	= 534
Total .....	.....	.....	= 1,602

Section	Total hours
668.43(a)(5)	566,850
668.43(a)(11)–(20)	10,694
668.43(c)	1,602

The total estimated burden for final § 668.43 will be 579,146 hours under OMB Control Number 1845–0156. The estimated institutional cost is \$26,270,062.56 based on \$45.36 per hour for Postsecondary Education Administrators, from the 2019 Bureau of Labor Statistics Occupational Outlook Handbook.

668.50—Institutional Disclosures for Distance or Correspondence Programs

Requirements

The final regulatory package will remove the current regulatory requirements in § 668.50, add in its place a severability provision.

Burden Calculation

The final regulatory package will remove the current regulatory requirements in § 668.50. This removes seven public disclosures that institutions offering distance education or correspondence courses were required to provide to students enrolled or seeking enrollment in such programs. These disclosures included whether the distance education program was authorized by the State where the student resided, if the institution was part of a State reciprocity agreement and consequences of a student moving to a

State where the institution did not meet State authorization requirements.

Other disclosures covered the process of submitting a complaint to the appropriate State agency where the main campus is located, process of submitting a complaint if the institution is covered under a State reciprocity agreement, disclosure of adverse actions initiated by the institution's State entity related to distance education, disclosure of adverse actions initiated by the institution accrediting agency, the disclosure of any refund policy required by any State in which the institution enrolls a student, and disclosure of whether the distance education program meets the applicable prerequisites for professional licensure or certification in the State where the student resides, if such a determination has been made. Also, there were two disclosures that were required to be provided directly to currently enrolled and prospective students in either distance education. Those disclosures included notice of an adverse action taken by a State or accrediting agency related to the distance education program and provided within 30 days of when the institution became aware of the action; and, a notice of the institution's determination the distance education program no longer meets the prerequisites for licensure or certification of a State. This disclosure had to be made within seven days of such a determination.

The removal of these regulations will eliminate the burden as assessed § 668.50 which is associated with OMB Control Number 1845–0145. The total burden hours of 152,405 are currently in the information collection 1845–0145 that will be discontinued upon the final effective date of the regulatory package. The estimated institutional cost savings is \$ – 6,913,091 based on \$45.36 per hour for Postsecondary Education Administrators, from the 2019 Bureau of Labor Statistics Occupational Outlook Handbook.

Consistent with the discussion above, the following chart describes the sections of the final regulations involving information collection, the information being collected and the collections that the Department will submit to OMB for approval and public comment under the PRA, and the estimated costs associated with the information collections. The monetized costs of the increased burden on institutions and accrediting agencies using wage data developed using Bureau of Labor Statistics data, available at <https://www.bls.gov/ooh/management/postsecondary-education-administrators.htm> is \$26,696,265 as shown in the chart below. At the effective date of July 1, 2020, there will be a savings of \$7,033,522 for a total annual net cost of \$19,662,744. This cost is based on the estimated hourly rate of \$45.36 for institutions and accrediting agencies.

COLLECTION INFORMATION

Regulatory section	Information collection	OMB control No. and estimated burden	Estimated costs	Estimated savings absent ICR requirement
§ 600.9(c)(2)(i), § 600.9(c)(2)(ii)—State authorization.	Institution must determine in which State a student is located while enrolled in a distance education or correspondence course when the institution participates in a State authorization reciprocity agreement under which it is covered in accordance with the institution's policies and procedures, and make such determinations consistently and apply them to all students. Institution must, upon request, provide the Secretary with written documentation of its determination of a student's location, including the basis for such determination.	OMB 1845–0144. We estimate that the burden will increase by 2,809 hours.	\$127,417.	
§ 602.12(b)(1)—Accrediting experience.	Agency will notify the Department of a geographic expansion and publicly disclose it on the agency's website, without requesting permission.	OMB 1840–0788. We estimate that the burden will increase by 1 hour.	\$45	We estimate that, on average, agencies will save 19 hours given they will inform the Department of a geographic expansion rather than request it, amounting to a \$861.84 savings.
§ 602.18(a)(6)—Ensuring consistency in decision-making. § 602.20(a)(2); § 602.20(b), § 602.20(d)—Enforcement of standards. § 602.22(a)(3)(i), § 602.22(a)(3)(ii), § 602.22(b)—Substantive changes and other reporting requirements. § 602.23(f)(1)(ii)—Operating procedures all agencies must have. § 602.24(a), § 602.24(c), § 602.24(f)—Additional procedures certain institutional agencies must have. § 602.26(b)—Notifications of accrediting decisions. § 602.22(a)(3)(i)—Substantive changes and other reporting requirements.	Agency will publish and distribute new policies, with detailed requirements. Agency will designate a staff member to approve or disapprove certain substantive changes.	OMB 1840–0788. We estimate that the burden will increase by 636 hours. 	\$28,849. 	We estimate agencies will save, on average, 318 hours, given designated substantive approvals could be determined by a senior staff member in place of the now required decision-making body, amounting to \$14,424.48.
§ 602.23(a)(2), § 602.23(f)(1)(ii)—Operating procedures all agencies must have.	Agency will make publicly available the procedures that institutions or programs must follow in applying for accreditation, preaccreditation, or substantive changes and the sequencing of those steps relative to any applications or decisions required by States or the Department relative to the agency's preaccreditation, accreditation or substantive change decisions; require that all preaccredited institutions have a teach-out plan with specific requirements.	OMB 1840–0788. We estimate that the burden will increase by 106 hours.	\$4,808.	
§ 602.24—Additional procedures certain institutional agencies must have.	Agency will delete existing credit hour policy requirements and overly prescriptive language; and add new language with definition clarifications.	OMB 1840–0788. We estimate that the burden will increase by 5,347 hours.	\$242,540	We estimate that agencies will save overall, on average, 2,246 hours given the final regulation will delete existing requirements related to evaluating credit hours amounting to a \$101,878.56 savings.
§ 602.31(f)—Agency applications and reports to be submitted to the Department.	Agency will redact personally identifiable information and other sensitive information prior to sending documents to the Department.	OMB 1840–0788. We estimate that the burden will increase by 285 hours.	\$12,928.	

COLLECTION INFORMATION—Continued

Regulatory section	Information collection	OMB control No. and estimated burden	Estimated costs	Estimated savings absent ICR requirement
§ 602.32(a), § 602.32(j)(1)—Procedures for applying for recognition, renewal of recognition, or for expansion of scope, compliance reports, and increases in enrollment.	Specifies what accrediting agencies preparing for recognition renewal will submit to the Department 24 months prior to the date their current recognition expires; outlines the process for an agency seeking an expansion of scope, either as a part of the regular renewal of recognition process or during a period of recognition.	OMB 1840–0788. We estimate that the burden will increase by 179 hours.	\$8,119.	
§ 602.36(f)—Senior Department official's decision.	Senior Department Official will determine whether an agency is compliant or substantially compliant, which will give accrediting agencies opportunities to make minor modifications to reflect progress toward full compliance using periodic monitoring reports.	OMB 1840–0788. We estimate that the burden will increase by 8 hours.	\$363	The increase in burden does not reflect the time saved for preparing and attending NACIQI meetings. We estimate that there will be 72 hours saved, on average, amounting to \$3,265.92.
§ 668.26—End of an institution's participation in the Title IV, HEA programs.	Secretary may permit an institution that has ended its participation in title IV programs to continue to originate, award, or disburse title IV funds for up to 120 days under specific circumstances. The institution must notify the Secretary of its plans to conduct an orderly closure in accordance with its accrediting agency, teach out its students, agree to abide by the conditions of the program participation agreement in effect at the time of the loss of participation, and provide written assurances of the health and safety of the students, the adequate financial resources to complete the teach-out and the institution is not subject to adverse action by the institution's State authorizing body or the accrediting agency.	OMB 1845–0156. We estimate that the burden will increase by 25 hours.	\$1,134.	
§ 668.43(a)(5)—Institutional information.	The final regulations will require an institution to disclose whether a program will fulfill educational requirements for licensure or certification if the program is designed to or advertised as meeting such requirements. Institutions will be required to disclose, for each State, whether the program did or did not meet such requirements, or whether the institution had not made such a determination.	OMB 1845–0156. We estimate that the burden will increase by 566,850 hours.	\$25,712,316.	
§ 668.43(a)(11) through (20)—Institutional information.	The final regulations will add disclosure requirements that are in statute but not reflected fully in the regulations as well as new disclosure requirements.	OMB 1845–0156. We estimate that the burden will increase by 10,694 hours.	\$485,080.	
§ 668.43(c)—Institutional information.	The final regulations will require direct disclosure to individual students in circumstances where an offered program no longer met the education requirements for licensure in a State where a prospective student was located, as well as to students enrolled in a program that ceased to meet such requirements.	OMB 1845–0156. We estimate that the burden will increase by 1,602 hours.	\$72,667.	
§ 668.50—Institutional Disclosure for Distance or Correspondence Programs.	The final regulations will remove and replace this language with a severability provision. The final regulations have moved some of the disclosure requirements from this section to § 668.43. Other requirements have been deemed duplicative.	OMB 1845–0145. We estimate a decrease of 152,405 hours. We will discontinue this collection upon the final effective date of the regulatory package.	This represents a cost savings of \$6,913,091.	

The total burden hours and change in burden hours associated with each OMB Control number affected by the regulations follows:

Control No.	Total burden hours	Change in burden hours
1840–0788	10,550	+6,562
1845–0144	2,969	+2,809
1845–0145	– 152,405	– 152,405
1845–0156	579,171	+579,171

If you want to comment on the final information collection requirements, please send your comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for U.S. Department of Education. Send these comments by email to OIRA_DOCKET@omb.eop.gov or by fax to (202) 395–6974. You may also send a copy of these comments to the Department contact

named in the **ADDRESSES** section of this preamble.

We have prepared an Information Collection Request (ICR) for these collections. You may to review the ICR, which is available at www.reginfo.gov. Click on Information Collection Review. These final collections are identified as final collections 1840–0788, 1845–0012, 1845–0144, 1845–0145, and 1845–0156.

Regulatory Flexibility Act Certification

The Secretary certifies that these final regulations will not have a significant economic impact on a substantial number of small entities.

Of the entities that the final regulations will affect, we consider many institutions to be small. The

Department recently proposed a size classification based on enrollment using IPEDS data that established the percentage of institutions in various sectors considered to be small entities, as shown in Table 17. We described this size classification in the NPRM published in the **Federal Register** on July 31, 2018 for the proposed borrower defense rule (83 FR 37242, 37302). The Department discussed the proposed standard with the Chief Counsel for Advocacy of the Small Business Administration, and while no change has been finalized, the Department continues to believe this approach better reflects a common basis for determining size categories that is linked to the provision of educational services.

TABLE 17—SMALL ENTITIES UNDER ENROLLMENT BASED DEFINITION

Level	Type	Small	Total	Percent
2-year	Public	342	1,240	28
2-year	Private	219	259	85
2-year	Proprietary	2,147	2,463	87
4-year	Public	64	759	8
4-year	Private	799	1,672	48
4-year	Proprietary	425	558	76
Total .....	.....	3,996	6,951	57

However, we do not expect the final regulations to have a significant economic impact on small entities. Nothing in the final regulations will compel institutions, small or not, to engage in substantive changes to programs that will trigger reporting to accrediting agencies or the Department. The final regulations will consolidate or relocate several institutional disclosures and add disclosure requirements under § 668.43, including disclosures relating to whether a program meets requirements for licensure, transfer of credit policies, written criteria to evaluate and award credit for prior learning experience, and written agreements under which an entity other than the institution itself provides all or part of a program. The final regulations will also add disclosure requirements that exist in statute but are not currently reflected in the regulations, including: (1) The percentage of the institution's enrolled students who are Pell Grant recipients, disaggregated by race, ethnicity, and gender; (2) placement in employment of, and types of employment obtained by, graduates of the institution's degree or certificate programs if its accrediting agency or State required it to calculate such rates; (3) the types of graduate and professional education in which graduates of the institution's four-year

degree programs enrolled; (4) the fire safety report prepared by the institution pursuant to § 668.49; (5) the retention rate of certificate- or degree-seeking, first-time, full-time, undergraduate students; and (6) institutional policies regarding vaccinations. The small institutions that have distance education or correspondence programs will benefit from the elimination of the disclosure requirement related to the complaints process. Across all institutions, the net result of the institutional disclosure changes is \$19,485,522 and there is no reason to believe the burden will fall disproportionately on small institutions. Using the 57 percent figure for small institutions in Table 17, the estimated cost of the disclosures in the final regulations for small institutions is \$11,106,748. Institutions of any size will benefit from the opportunity to seek out a different or additional accreditation in a timeframe that suits them, but there is no requirement to do so.

The other group affected by the final regulations are accrediting agencies. The State agencies that act as accrediting are not small, as we define public institutions as “small organizations” if they are operated by a government overseeing a population below 50,000.

The Department does not have revenue information for accrediting

agencies and believes most organize as nonprofit entities that we define as “small entities” if they are independently owned and operated and not dominant in their field of operation. While dominance in accreditation is hard to determine, as it currently stands, the Department believes regional accrediting agencies are dominant within their regions and programmatic accrediting agencies very often dominate their field. Therefore, we do not consider the 53 accrediting agencies to be small entities.

Even if we considered the accrediting agencies to be small entities, we designed these final regulations to grant the agencies greater operational flexibility and to reduce administrative burden so they can focus on higher risk changes to institutions and programs. Nothing in the final regulations will require accrediting agencies to expand their operations or take on new institutions, but they will give them that opportunity. There could even be potential opportunities for accrediting agencies that are small entities to develop in specialized areas and potentially grow.

Thus, the Department believes small entities will experience regulatory relief and a positive economic impact as a result of these final regulations with effects that will develop over years as

accrediting agencies and institutions decide how to react to the changes in the final regulations.

Intergovernmental Review

These programs are subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for these programs.

Assessment of Educational Impact

Based on the response to the NPRM and on our review, we have determined that these final regulations do not require transmission of information that any other agency or authority of the United States gathers or makes available.

Federalism

Executive Order 13132 requires us to ensure meaningful and timely input by State and local elected officials in the development of regulatory policies that have federalism implications. “Federalism implications” means substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government.

In the NPRM we noted that §§ 600, 602, 603, and 668 may have federalism implications and encouraged State and local elected officials to review and provide comments on these final regulations. In the *Public Comment* section of this preamble, we discuss any comments we received on this subject.

Accessible Format: Individuals with disabilities can obtain this document in an accessible format (e.g., Braille, large print, audiotope, or compact disc) on request to one of the program contact persons listed under **FOR FURTHER INFORMATION CONTACT**.

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Format (PDF). To use PDF, you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: www.federalregister.gov. Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

List of Subjects

34 CFR Part 600

Colleges and universities, Foreign relations, Grant programs—education, Loan programs—education, Reporting and recordkeeping requirements, Student aid, Vocational education.

34 CFR Part 602

Colleges and universities, Reporting and recordkeeping requirements.

34 CFR Part 603

Colleges and universities, Vocational education.

34 CFR Part 654

Grant programs—education, Reporting and recordkeeping requirements, Scholarships and fellowships.

34 CFR Part 668

Administrative practice and procedure, Colleges and universities, Consumer protection, Grant programs—education, Loan programs—education, Reporting and recordkeeping requirements, Selective Service System, Student aid, Vocational education.

34 CFR Part 674

Loan programs—education, Reporting and recordkeeping, Student aid.

Dated: October 18, 2019.

Betsy DeVos,

Secretary of Education.

For the reasons discussed in the preamble, the Secretary of Education amends parts 600, 602, 603, 654, 668 and 674 of title 34 of the Code of Federal Regulations as follows:

PART 600—INSTITUTIONAL ELIGIBILITY UNDER THE HIGHER EDUCATION ACT OF 1965 AS AMENDED

■ 1. The authority citation for part 600 continues to read as follows:

Authority: 20 U.S.C. 1001, 1002, 1003, 1088, 1091, 1094, 1099b, and 1099c, unless otherwise noted.

■ 2. Section 600.2 is amended by:

■ a. Adding in alphabetical order a definition for “Additional location”;

■ b. Revising the definition of “Branch Campus”;

■ c. Adding in alphabetical order a definition for “Preaccreditation”;

■ d. Removing the definition of “Preaccredited”;

■ e. Adding in alphabetical order a definition for “Religious mission”;

■ f. Revising in alphabetical order the definition of “State authorization reciprocity agreement”;

■ g. Adding in alphabetical order definitions for “Teach-out” and “Teach-out agreement”; and

■ h. Revising the definition of “Teach-out plan”.

The additions and revisions read as follows:

§ 600.2 Definitions.

* * * * *

Additional location: A facility that is geographically apart from the main campus of the institution and at which the institution offers at least 50 percent of a program and may qualify as a branch campus.

* * * * *

Branch campus: An additional location of an institution that is geographically apart and independent of the main campus of the institution. The Secretary considers a location of an institution to be independent of the main campus if the location—

(1) Is permanent in nature;

(2) Offers courses in educational programs leading to a degree, certificate, or other recognized educational credential;

(3) Has its own faculty and administrative or supervisory organization; and

(4) Has its own budgetary and hiring authority.

* * * * *

Preaccreditation: The status of accreditation and public recognition that a nationally recognized accrediting agency grants to an institution or program for a limited period of time that signifies the agency has determined that the institution or program is progressing toward full accreditation and is likely to attain full accreditation before the expiration of that limited period of time (sometimes referred to as “candidacy”).

* * * * *

Religious mission: A published institutional mission that is approved by the governing body of an institution of postsecondary education and that includes, refers to, or is predicated upon religious tenets, beliefs, or teachings.

* * * * *

State authorization reciprocity agreement: An agreement between two or more States that authorizes an

institution located and legally authorized in a State covered by the agreement to provide postsecondary education through distance education or correspondence courses to students located in other States covered by the agreement and cannot prohibit any member State of the agreement from enforcing its own general-purpose State laws and regulations outside of the State authorization of distance education.

* * * * *

Teach-out: A process during which a program, institution, or institutional location that provides 100 percent of at least one program engages in an orderly closure or when, following the closure of an institution or campus, another institution provides an opportunity for the students of the closed school to complete their program, regardless of their academic progress at the time of closure.

Teach-out agreement: A written agreement between institutions that provides for the equitable treatment of students and a reasonable opportunity for students to complete their program of study if an institution, or an institutional location that provides 100 percent of at least one program offered, ceases to operate or plans to cease operations before all enrolled students have completed their program of study.

Teach-out plan: A written plan developed by an institution that provides for the equitable treatment of students if an institution, or an institutional location that provides 100 percent of at least one program, ceases to operate or plans to cease operations before all enrolled students have completed their program of study.

* * * * *

■ 3. Section 600.4 is amended by revising paragraph (c) to read as follows:

§ 600.4 Institution of higher education.

* * * * *

(c) The Secretary does not recognize the accreditation or preaccreditation of an institution unless the institution agrees to submit any dispute involving an adverse action, such as the final denial, withdrawal, or termination of accreditation, to arbitration before initiating any other legal action.

* * * * *

■ 4. Section 600.5 is amended by revising paragraphs (d) and (e) to read as follows:

§ 600.5 Proprietary institution of higher education.

* * * * *

(d) The Secretary does not recognize the accreditation of an institution unless the institution agrees to submit any

dispute involving an adverse action, such as the final denial, withdrawal, or termination of accreditation, to arbitration before initiating any other legal action.

(e) For purposes of this section, a “program leading to a baccalaureate degree in liberal arts” is a program that is a general instructional program falling within one or more of the following generally accepted instructional categories comprising such programs, but including only instruction in regular programs, and excluding independently designed programs, individualized programs, and unstructured studies:

(1) A program that is a structured combination of the arts, biological and physical sciences, social sciences, and humanities, emphasizing breadth of study.

(2) An undifferentiated program that includes instruction in the general arts or general science.

(3) A program that focuses on combined studies and research in humanities subjects as distinguished from the social and physical sciences, emphasizing languages, literature, art, music, philosophy, and religion.

(4) Any single instructional program in liberal arts and sciences, general studies, and humanities not listed in paragraphs (e)(1) through (3) of this section.

* * * * *

■ 5. Section 600.6 is amended by revising paragraph (d) to read as follows:

§ 600.6 Postsecondary vocational institution.

* * * * *

(d) The Secretary does not recognize the accreditation or preaccreditation of an institution unless the institution agrees to submit any dispute involving an adverse action, such as the final denial, withdrawal, or termination of accreditation, to arbitration before initiating any other legal action.

* * * * *

■ 6. Section 600.9 is amended by:

■ a. Revising paragraphs (b) and (c); and

■ b. Revising paragraph (d)(1)(iii). The revisions read as follows:

§ 600.9 State authorization.

* * * * *

(b) An institution is considered to be legally authorized to operate educational programs beyond secondary education if it is exempt as a religious institution from State authorization under the State constitution or by State law.

(c)(1)(i) If an institution that meets the requirements under paragraph (a)(1) or

(b) of this section offers postsecondary education through distance education or correspondence courses to students located in a State in which the institution is not physically located or in which the institution is otherwise subject to that State’s jurisdiction as determined by that State, except as provided in paragraph (c)(1)(ii) of this section, the institution must meet any of that State’s requirements for it to be legally offering postsecondary distance education or correspondence courses in that State. The institution must, upon request, document the State’s approval to the Secretary; or

(ii) If an institution that meets the requirements under paragraph (a)(1) or (b) of this section offers postsecondary education through distance education or correspondence courses in a State that participates in a State authorization reciprocity agreement, and the institution is covered by such agreement, the institution is considered to meet State requirements for it to be legally offering postsecondary distance education or correspondence courses in that State, subject to any limitations in that agreement and to any additional requirements of that State not relating to State authorization of distance education. The institution must, upon request, document its coverage under such an agreement to the Secretary.

(c)(2)(i) For purposes of this section, an institution must make a determination, in accordance with the institution’s policies or procedures, regarding the State in which a student is located, which must be applied consistently to all students.

(ii) The institution must, upon request, provide the Secretary with written documentation of its determination of a student’s location, including the basis for such determination.

(iii) An institution must make a determination regarding the State in which a student is located at the time of the student’s initial enrollment in an educational program and, if applicable, upon formal receipt of information from the student, in accordance with the institution’s procedures, that the student’s location has changed to another State.

* * * * *

(d) * * *

(1) * * *

(iii) The additional location or branch campus must be approved by the institution’s recognized accrediting agency in accordance with § 602.22(a)(2)(ix) and (c).

* * * * *

■ 7. Section 600.11 is amended by revising paragraphs (a) and (b)(2) to read as follows:

§ 600.11 Special rules regarding institutional accreditation or preaccreditation.

(a) *Change of accrediting agencies.* (1) For purposes of §§ 600.4(a)(5)(i), 600.5(a)(6), and 600.6(a)(5)(i), the Secretary does not recognize the accreditation or preaccreditation of an otherwise eligible institution if that institution is in the process of changing its accrediting agency, unless the institution provides the following to the Secretary and receives approval:

(i) All materials related to its prior accreditation or preaccreditation.

(ii) Materials demonstrating reasonable cause for changing its accrediting agency. The Secretary will not determine such cause to be reasonable if the institution—

(A) Has had its accreditation withdrawn, revoked, or otherwise terminated for cause during the preceding 24 months, unless such withdrawal, revocation, or termination has been rescinded by the same accrediting agency; or

(B) Has been subject to a probation or equivalent, show cause order, or suspension order during the preceding 24 months.

(2) Notwithstanding paragraph (a)(1)(ii) of this section, the Secretary may determine the institution's cause for changing its accrediting agency to be reasonable if the agency did not provide the institution its due process rights as defined in § 602.25, the agency applied its standards and criteria inconsistently, or if the adverse action or show cause or suspension order was the result of an agency's failure to respect an institution's stated mission, including religious mission.

(b) * * *

(2) Demonstrates to the Secretary reasonable cause for that multiple accreditation or preaccreditation.

(i) The Secretary determines the institution's cause for multiple accreditation to be reasonable unless the institution—

(A) Has had its accreditation withdrawn, revoked, or otherwise terminated for cause during the preceding 24 months, unless such withdrawal, revocation, or termination has been rescinded by the same accrediting agency; or

(B) Has been subject to a probation or equivalent, show cause order, or suspension order during the preceding 24 months.

(ii) Notwithstanding paragraphs (b)(2)(i)(A) and (B) of this section, the

Secretary may determine the institution's cause for seeking multiple accreditation or preaccreditation to be reasonable if the institution's primary interest in seeking multiple accreditation is based on that agency's geographic area, program-area focus, or mission; and

* * * * *

■ 8. Add § 600.12 to read as follows:

§ 600.12 Severability.

If any provision of this subpart or its application to any person, act, or practice is held invalid, the remainder of the subpart or the application of its provisions to any person, act, or practice shall not be affected thereby.

■ 9. Section 600.31 is amended by:

■ a. Revising paragraph (a)(1);

■ b. In paragraph (b), revising the definitions of "Closely-held corporation", "Ownership or ownership interest", "Parent", and "Person"; and

■ c. Revising paragraphs (c)(3) through (5).

The revisions read as follows:

§ 600.31 Change in ownership resulting in a change in control for private nonprofit, private for-profit and public institutions.

(a)(1) Except as provided in paragraph (a)(2) of this section, a private nonprofit, private for-profit, or public institution that undergoes a change in ownership that results in a change in control ceases to qualify as an eligible institution upon the change in ownership and control. A change of ownership that results in a change in control includes any change by which a person who has or thereby acquires an ownership interest in the entity that owns the institution or the parent of that entity, acquires or loses the ability to control the institution.

* * * * *

(b) * * *

Closely-held corporation. Closely-held corporation (including the term "close corporation") means—

(1) A corporation that qualifies under the law of the State of its incorporation or organization as a closely-held corporation; or

(2) If the State of incorporation or organization has no definition of closely-held corporation, a corporation the stock of which—

(i) Is held by no more than 30 persons; and

(ii) Has not been and is not planned to be publicly offered.

* * * * *

Ownership or ownership interest. (1) Ownership or ownership interest means a legal or beneficial interest in an institution or its corporate parent, or a right to share in the profits derived from

the operation of an institution or its corporate parent.

(2) Ownership or ownership interest does not include an ownership interest held by—

(i) A mutual fund that is regularly and publicly traded;

(ii) A U.S. institutional investor, as defined in 17 CFR 240.15a-6(b)(7);

(iii) A profit-sharing plan of the institution or its corporate parent, provided that all full-time permanent employees of the institution or its corporate parent are included in the plan; or

(iv) An employee stock ownership plan (ESOP).

Parent. The parent or parent entity is the entity that controls the specified entity directly or indirectly through one or more intermediaries.

Person. Person includes a legal entity or a natural person.

* * * * *

(c) * * *

(3) *Other entities.* The term "other entities" includes limited liability companies, limited liability partnerships, limited partnerships, and similar types of legal entities. A change in ownership and control of an entity that is neither closely-held nor required to be registered with the SEC occurs when—

(i) A person who has or acquires an ownership interest acquires both control of at least 25 percent of the total of outstanding voting stock of the corporation and control of the corporation; or

(ii) A person who holds both ownership or control of at least 25 percent of the total outstanding voting stock of the corporation and control of the corporation, ceases to own or control that proportion of the stock of the corporation, or to control the corporation.

(4) *General partnership or sole proprietorship.* A change in ownership and control occurs when a person who has or acquires an ownership interest acquires or loses control as described in this section.

(5) *Wholly owned subsidiary.* An entity that is a wholly owned subsidiary changes ownership and control when its parent entity changes ownership and control as described in this section.

* * * * *

■ 10. Section 600.32 is amended by revising paragraphs (c) introductory text, (c)(1) and (2), (d)(1), (d)(2)(i) introductory text, and (d)(2)(i)(A) and (B) to read as follows:

§ 600.32 Eligibility of additional locations.

* * * * *

(c) Notwithstanding paragraph (b) of this section, an additional location is not required to satisfy the two-year requirement of § 600.5(a)(7) or § 600.6(a)(6) if the applicant institution and the original institution are not related parties and there is no commonality of ownership, control, or management between the institutions, as described in 34 CFR 668.188(b) and 34 CFR 668.207(b) and the applicant institution agrees—

(1) To be liable for all improperly expended or unspent title IV, HEA program funds received during the current academic year and up to one academic year prior by the institution that has closed or ceased to provide educational programs;

(2) To be liable for all unpaid refunds owed to students who received title IV, HEA program funds during the current academic year and up to one academic year prior; and

* * * * *

(d)(1) An institution that conducts a teach-out at a site of a closed institution or an institution engaged in a teach-out plan approved by the institution's agency may apply to have that site approved as an additional location if—

(i) The closed institution ceased operations, or the closing institution is engaged in an orderly teach-out plan and the Secretary has evaluated and approved that plan; and

(ii) The teach-out plan required under 34 CFR 668.14(b)(31) is approved by the closed or closing institution's accrediting agency.

(2)(i) An institution that conducts a teach-out and is approved to add an additional location described in paragraph (d)(1) of this section—

(A) Does not have to meet the requirement of § 600.5(a)(7) or § 600.6(a)(6) for the additional location described in paragraph (d)(1) of this section;

(B) Is not responsible for any liabilities of the closed or closing institution as provided under paragraph (c)(1) and (c)(2) of this section if the institutions are not related parties and there is no commonality of ownership or management between the institutions, as described in 34 CFR 668.188(b) and 34 CFR 668.207(b); and

* * * * *

■ 11. Add § 600.33 to read as follows:

§ 600.33 Severability.

If any provision of this subpart or its application to any person, act, or practice is held invalid, the remainder of the subpart or the application of its provisions to any person, act, or practice shall not be affected thereby.

■ 12. Section 600.41 is amended by:

■ a. Removing paragraph (a)(1)(ii)(B) and redesignating paragraphs (a)(1)(ii)(C) through (G) as paragraphs (a)(1)(ii)(B) through (F); and

■ b. Revising paragraph (d) introductory text.

The revision reads as follows:

§ 600.41 Termination and emergency action proceedings.

* * * * *

(d) After a termination under this section of the eligibility of an institution as a whole or as to a location or educational program becomes final, the institution may not originate applications for, make awards of or commitments for, deliver, or disburse funds under the applicable title IV, HEA program, except—

* * * * *

■ 13. Add § 600.42 to read as follows:

§ 600.42 Severability.

If any provision of this subpart or its application to any person, act, or practice is held invalid, the remainder of the subpart or the application of its provisions to any person, act, or practice shall not be affected thereby.

PART 602—THE SECRETARY'S RECOGNITION OF ACCREDITING AGENCIES

■ 14. The authority citation for part 602 continues to read as follows:

Authority: 20 U.S.C. 1099b, unless otherwise noted.

■ 15. Section 602.3 is amended by:

■ a. Redesignating the introductory text as paragraph (b);

■ b. Adding paragraph (a); and

■ c. In newly redesignated paragraph (b):

■ i. Removing the definition of “Branch campus”;

■ ii. Revising the definition of “Compliance report”;

■ iii. Removing the definition of “Correspondence education” and “Direct assessment program”;

■ iv. Revising the definition of “Final accrediting action”;

■ v. Removing the definition of “Institution of higher education or institution”;

■ vi. Adding in alphabetical order a definition for “Monitoring report”;

■ vii. Removing the definitions of “Nationally recognized accrediting agency, nationally recognized agency, or recognized agency” and “Preaccreditation”;

■ viii. Revising the definitions of “Programmatic accrediting agency” and “Scope of recognition or scope”;

■ ix. Removing the definition of “Secretary”;

■ x. Revising the definition of “Senior Department official”;

■ ix. Removing the definition of “State”;

■ x. Adding in alphabetical order a definition for “Substantial compliance”; and

■ xi. Removing the definitions of “Teach-out agreement” and “Teach-out plan”.

The additions and revisions read as follows:

§ 602.3 What definitions apply to this part?

(a) The following definitions are contained in the regulations for Institutional Eligibility under the Higher Education Act of 1965, as amended, 34 CFR part 600:

- (1) Accredited
- (2) Additional location
- (3) Branch campus
- (4) Correspondence course
- (5) Direct assessment program
- (6) Institution of higher education
- (7) Nationally recognized accrediting agency
- (8) Preaccreditation
- (9) Religious mission
- (10) Secretary
- (11) State
- (12) Teach-out
- (13) Teach-out agreement
- (14) Teach-out plan

(b) * * *

* * * * *

Compliance report means a written report that the Department requires an agency to file when the agency is found to be out of compliance to demonstrate that the agency has corrected deficiencies specified in the decision letter from the senior Department official or the Secretary. Compliance reports must be reviewed by Department staff and the Advisory Committee and approved by the senior Department official or, in the event of an appeal, by the Secretary.

* * * * *

Final accrediting action means a final determination by an accrediting agency regarding the accreditation or preaccreditation status of an institution or program. A final accrediting action is a decision made by the agency, at the conclusion of any appeals process available to the institution or program under the agency's due process policies and procedures.

* * * * *

Monitoring report means a report that an agency is required to submit to Department staff when it is found to be substantially compliant. The report contains documentation to demonstrate that—

(i) The agency is implementing its current or corrected policies; or

(ii) The agency, which is compliant in practice, has updated its policies to align with those compliant practices.

* * * * *

Programmatic accrediting agency means an agency that accredits specific educational programs, including those that prepare students in specific academic disciplines or for entry into a profession, occupation, or vocation.

* * * * *

Scope of recognition or *scope* means the range of accrediting activities for which the Secretary recognizes an agency. The Secretary may place a limitation on the scope of an agency's recognition for title IV, HEA purposes. The Secretary's designation of scope defines the recognition granted according to—

(i) Types of degrees and certificates covered;

(ii) Types of institutions and programs covered;

(iii) Types of preaccreditation status covered, if any; and

(iv) Coverage of accrediting activities related to distance education or correspondence courses.

Senior Department official means the official in the U.S. Department of Education designated by the Secretary who has, in the judgment of the Secretary, appropriate seniority and relevant subject matter knowledge to make independent decisions on accrediting agency recognition.

Substantial compliance means the agency demonstrated to the Department that it has the necessary policies, practices, and standards in place and generally adheres with fidelity to those policies, practices, and standards; or the agency has policies, practices, and standards in place that need minor modifications to reflect its generally compliant practice.

* * * * *

■ 16. Add § 602.4 to read as follows:

§ 602.4 Severability.

If any provision of this subpart or its application to any person, act, or practice is held invalid, the remainder of the subpart or the application of its provisions to any person, act, or practice shall not be affected thereby.

■ 17. Section 602.10 is amended by revising paragraph (a) to read as follows:

§ 602.10 Link to Federal programs.

* * * * *

(a) If the agency accredits institutions of higher education, its accreditation is a required element in enabling at least one of those institutions to establish eligibility to participate in HEA programs. If, pursuant to 34 CFR

600.11(b), an agency accredits one or more institutions that participate in HEA programs and that could designate the agency as its link to HEA programs, the agency satisfies this requirement, even if the institution currently designates another institutional accrediting agency as its Federal link; or

* * * * *

■ 18. Section 602.11 is revised to read as follows:

§ 602.11 Geographic area of accrediting activities.

The agency must demonstrate that it conducts accrediting activities within—

(a) A State, if the agency is part of a State government;

(b) A region or group of States chosen by the agency in which an agency provides accreditation to a main campus, a branch campus, or an additional location of an institution. An agency whose geographic area includes a State in which a branch campus or additional location is located is not required to also accredit a main campus in that State. An agency whose geographic area includes a State in which only a branch campus or additional location is located is not required to accept an application for accreditation from other institutions in such State; or

(c) The United States.

(Authority: 20 U.S.C. 1099b)

■ 19. Section 602.12 is revised to read as follows:

§ 602.12 Accrediting experience.

(a) An agency seeking initial recognition must demonstrate that it has—

(1) Granted accreditation or preaccreditation prior to submitting an application for recognition—

(i) To one or more institutions if it is requesting recognition as an institutional accrediting agency and to one or more programs if it is requesting recognition as a programmatic accrediting agency;

(ii) That covers the range of the specific degrees, certificates, institutions, and programs for which it seeks recognition; and

(iii) In the geographic area for which it seeks recognition; and

(2) Conducted accrediting activities, including deciding whether to grant or deny accreditation or preaccreditation, for at least two years prior to seeking recognition, unless the agency seeking initial recognition is affiliated with, or is a division of, an already recognized agency.

(b)(1) A recognized agency seeking an expansion of its scope of recognition

must follow the requirements of §§ 602.31 and 602.32 and demonstrate that it has accreditation or preaccreditation policies in place that meet all the criteria for recognition covering the range of the specific degrees, certificates, institutions, and programs for which it seeks the expansion of scope and has engaged and can show support from relevant constituencies for the expansion. A change to an agency's geographic area of accrediting activities does not constitute an expansion of the agency's scope of recognition, but the agency must notify the Department of, and publicly disclose on the agency's website, any such change.

(2) An agency that cannot demonstrate experience in making accreditation or preaccreditation decisions under the expanded scope at the time of its application or review for an expansion of scope may—

(i) If it is an institutional accrediting agency, be limited in the number of institutions to which it may grant accreditation under the expanded scope for a designated period of time; or

(ii) If it is a programmatic accrediting agency, be limited in the number of programs to which it may grant accreditation under that expanded scope for a certain period of time; and

(iii) Be required to submit a monitoring report regarding accreditation decisions made under the expanded scope.

(Authority: 20 U.S.C. 1099b)

§ 602.13 [Removed and Reserved]

■ 20. Section 602.13 is removed and reserved.

■ 21. Section 602.14 is revised to read as follows:

§ 602.14 Purpose and organization.

(a) The Secretary recognizes only the following four categories of accrediting agencies:

(1) A State agency that—

(i) Has as a principal purpose the accrediting of institutions of higher education, higher education programs, or both; and

(ii) Has been listed by the Secretary as a nationally recognized accrediting agency on or before October 1, 1991.

(2) An accrediting agency that—

(i) Has a voluntary membership of institutions of higher education;

(ii) Has as a principal purpose the accrediting of institutions of higher education and that accreditation is used to provide a link to Federal HEA programs in accordance with § 602.10; and

(iii) Satisfies the “separate and independent” requirements in paragraph (b) of this section.

(3) An accrediting agency that—

(i) Has a voluntary membership; and

(ii) Has as its principal purpose the accrediting of institutions of higher education or programs, and the accreditation it offers is used to provide a link to non-HEA Federal programs in accordance with § 602.10.

(4) An accrediting agency that, for purposes of determining eligibility for title IV, HEA programs—

(i)(A) Has a voluntary membership of individuals participating in a profession; or

(B) Has as its principal purpose the accrediting of programs within institutions that are accredited by another nationally recognized accrediting agency; and

(ii) Satisfies the “separate and independent” requirements in paragraph (b) of this section or obtains a waiver of those requirements under paragraph (d) of this section.

(b) For purposes of this section, “separate and independent” means that—

(1) The members of the agency’s decision-making body, who decide the accreditation or preaccreditation status of institutions or programs, establish the agency’s accreditation policies, or both, are not elected or selected by the board or chief executive officer of any related, associated, or affiliated trade association, professional organization, or membership organization and are not staff of the related, associated, or affiliated trade association, professional organization, or membership organization; or

(2) At least one member of the agency’s decision-making body is a representative of the public, and at least one-seventh of the body consists of representatives of the public;

(3) The agency has established and implemented guidelines for each member of the decision-making body including guidelines on avoiding conflicts of interest in making decisions;

(4) The agency’s dues are paid separately from any dues paid to any related, associated, or affiliated trade association or membership organization; and

(5) The agency develops and determines its own budget, with no review by or consultation with any other entity or organization.

(c) The Secretary considers that any joint use of personnel, services, equipment, or facilities by an agency and a related, associated, or affiliated trade association or membership organization does not violate the

“separate and independent” requirements in paragraph (b) of this section if—

(1) The agency pays the fair market value for its proportionate share of the joint use; and

(2) The joint use does not compromise the independence and confidentiality of the accreditation process.

(d) For purposes of paragraph (a)(4) of this section, the Secretary may waive the “separate and independent” requirements in paragraph (b) of this section if the agency demonstrates that—

(1) The Secretary listed the agency as a nationally recognized agency on or before October 1, 1991, and has recognized it continuously since that date;

(2) The related, associated, or affiliated trade association or membership organization plays no role in making or ratifying either the accrediting or policy decisions of the agency;

(3) The agency has sufficient budgetary and administrative autonomy to carry out its accrediting functions independently;

(4) The agency provides to the related, associated, or affiliated trade association or membership organization only information it makes available to the public.

(e) An agency seeking a waiver of the “separate and independent” requirements under paragraph (d) of this section must apply for the waiver each time the agency seeks recognition or continued recognition.

(Authority: 20 U.S.C. 1099b)

■ 22. Section 602.15 is revised to read as follows:

§ 602.15 Administrative and fiscal responsibilities.

The agency must have the administrative and fiscal capability to carry out its accreditation activities in light of its requested scope of recognition. The agency meets this requirement if the agency demonstrates that—

(a) The agency has—

(1) Adequate administrative staff and financial resources to carry out its accrediting responsibilities;

(2) Competent and knowledgeable individuals, qualified by education or experience in their own right and trained by the agency on their responsibilities, as appropriate for their roles, regarding the agency’s standards, policies, and procedures, to conduct its on-site evaluations, apply or establish its policies, and make its accrediting and preaccrediting decisions, including,

if applicable to the agency’s scope, their responsibilities regarding distance education and correspondence courses;

(3) Academic and administrative personnel on its evaluation, policy, and decision-making bodies, if the agency accredits institutions;

(4) Educators, practitioners, and/or employers on its evaluation, policy, and decision-making bodies, if the agency accredits programs or single-purpose institutions that prepare students for a specific profession;

(5) Representatives of the public, which may include students, on all decision-making bodies; and

(6) Clear and effective controls, including guidelines, to prevent or resolve conflicts of interest, or the appearance of conflicts of interest, by the agency’s—

(i) Board members;

(ii) Commissioners;

(iii) Evaluation team members;

(iv) Consultants;

(v) Administrative staff; and

(vi) Other agency representatives; and

(b) The agency maintains complete and accurate records of—

(1) Its last full accreditation or preaccreditation review of each institution or program, including on-site evaluation team reports, the institution’s or program’s responses to on-site reports, periodic review reports, any reports of special reviews conducted by the agency between regular reviews, and a copy of the institution’s or program’s most recent self-study; and

(2) All decision letters issued by the agency regarding the accreditation and preaccreditation of any institution or program and any substantive changes.

(Authority: 20 U.S.C. 1099b)

■ 23. Section 602.16 is revised to read as follows:

§ 602.16 Accreditation and preaccreditation standards.

(a) The agency must demonstrate that it has standards for accreditation, and preaccreditation, if offered, that are sufficiently rigorous to ensure that the agency is a reliable authority regarding the quality of the education or training provided by the institutions or programs it accredits. The agency meets this requirement if the following conditions are met:

(1) The agency’s accreditation standards must set forth clear expectations for the institutions or programs it accredits in the following areas:

(i) Success with respect to student achievement in relation to the institution’s mission, which may include different standards for different

institutions or programs, as established by the institution, including, as appropriate, consideration of State licensing examinations, course completion, and job placement rates.

(ii) Curricula.

(iii) Faculty.

(iv) Facilities, equipment, and supplies.

(v) Fiscal and administrative capacity as appropriate to the specified scale of operations.

(vi) Student support services.

(vii) Recruiting and admissions practices, academic calendars, catalogs, publications, grading, and advertising.

(viii) Measures of program length and the objectives of the degrees or credentials offered.

(ix) Record of student complaints received by, or available to, the agency.

(x) Record of compliance with the institution's program responsibilities under title IV of the Act, based on the most recent student loan default rate data provided by the Secretary, the results of financial or compliance audits, program reviews, and any other information that the Secretary may provide to the agency; and

(2) The agency's preaccreditation standards, if offered, must—

(i) Be appropriately related to the agency's accreditation standards; and

(ii) Not permit the institution or program to hold preaccreditation status for more than five years before a final accrediting action is made.

(b) Agencies are not required to apply the standards described in paragraph (a)(1)(x) of this section to institutions that do not participate in title IV, HEA programs. Under such circumstance, the agency's grant of accreditation or preaccreditation must specify that the grant, by request of the institution, does not include participation by the institution in title IV, HEA programs.

(c) If the agency only accredits programs and does not serve as an institutional accrediting agency for any of those programs, its accreditation standards must address the areas in paragraph (a)(1) of this section in terms of the type and level of the program rather than in terms of the institution.

(d)(1) If the agency has or seeks to include within its scope of recognition the evaluation of the quality of institutions or programs offering distance education, correspondence courses, or direct assessment education, the agency's standards must effectively address the quality of an institution's distance education, correspondence courses, or direct assessment education in the areas identified in paragraph (a)(1) of this section.

(2) The agency is not required to have separate standards, procedures, or

policies for the evaluation of distance education or correspondence courses.

(e) If none of the institutions an agency accredits participates in any title IV, HEA program, or if the agency only accredits programs within institutions that are accredited by a nationally recognized institutional accrediting agency, the agency is not required to have the accreditation standards described in paragraphs (a)(1)(viii) and (a)(1)(x) of this section.

(f) An agency that has established and applies the standards in paragraph (a) of this section may establish any additional accreditation standards it deems appropriate.

(g) Nothing in paragraph (a) of this section restricts—

(1) An accrediting agency from setting, with the involvement of its members, and applying accreditation standards for or to institutions or programs that seek review by the agency;

(2) An institution from developing and using institutional standards to show its success with respect to student achievement, which achievement may be considered as part of any accreditation review; or

(3) Agencies from having separate standards regarding an institution's or a program's process for approving curriculum to enable programs to more effectively meet the recommendations of—

(i) Industry advisory boards that include employers who hire program graduates;

(ii) Widely recognized industry standards and organizations;

(iii) Credentialing or other occupational registration or licensure; or

(iv) Employers in a given field or occupation, in making hiring decisions.

(4) Agencies from having separate faculty standards for instructors teaching courses within a dual or concurrent enrollment program, as defined in 20 U.S.C. 7801, or career and technical education courses, as long as the instructors, in the agency's judgment, are qualified by education or work experience for that role.

(Authority: 20 U.S.C. 1099b)

■ 24. Section 602.17 is revised to read as follows:

§ 602.17 Application of standards in reaching accreditation decisions.

The agency must have effective mechanisms for evaluating an institution's or program's compliance with the agency's standards before reaching a decision to accredit or preaccredit the institution or program. The agency meets this requirement if the agency demonstrates that it—

(a) Evaluates whether an institution or program—

(1) Maintains clearly specified educational objectives that are consistent with its mission and appropriate in light of the degrees or certificates awarded;

(2) Is successful in achieving its stated objectives at both the institutional and program levels; and

(3) Maintains requirements that at least conform to commonly accepted academic standards, or the equivalent, including pilot programs in § 602.18(b);

(b) Requires the institution or program to engage in a self-study process that assesses the institution's or program's education quality and success in meeting its mission and objectives, highlights opportunities for improvement, and includes a plan for making those improvements;

(c) Conducts at least one on-site review of the institution or program during which it obtains sufficient information to determine if the institution or program complies with the agency's standards;

(d) Allows the institution or program the opportunity to respond in writing to the report of the on-site review;

(e) Conducts its own analysis of the self-study and supporting documentation furnished by the institution or program, the report of the on-site review, the institution's or program's response to the report, and any other information substantiated by the agency from other sources to determine whether the institution or program complies with the agency's standards;

(f) Provides the institution or program with a detailed written report that assesses the institution's or program's compliance with the agency's standards, including areas needing improvement, and the institution's or program's performance with respect to student achievement;

(g) Requires institutions to have processes in place through which the institution establishes that a student who registers in any course offered via distance education or correspondence is the same student who academically engages in the course or program; and

(h) Makes clear in writing that institutions must use processes that protect student privacy and notify students of any projected additional student charges associated with the verification of student identity at the time of registration or enrollment.

(Authority: 20 U.S.C. 1099b)

■ 25. Section 602.18 is revised to read as follows:

§ 602.18 Ensuring consistency in decision-making.

(a) The agency must consistently apply and enforce standards that respect the stated mission of the institution, including religious mission, and that ensure that the education or training offered by an institution or program, including any offered through distance education, correspondence courses, or direct assessment education is of sufficient quality to achieve its stated objective for the duration of any accreditation or preaccreditation period.

(b) The agency meets the requirement in paragraph (a) of this section if the agency—

(1) Has written specification of the requirements for accreditation and preaccreditation that include clear standards for an institution or program to be accredited or preaccredited;

(2) Has effective controls against the inconsistent application of the agency's standards;

(3) Bases decisions regarding accreditation and preaccreditation on the agency's published standards and does not use as a negative factor the institution's religious mission-based policies, decisions, and practices in the areas covered by § 602.16(a)(1)(ii), (iii), (iv), (vi), and (vii) provided, however, that the agency may require that the institution's or program's curricula include all core components required by the agency;

(4) Has a reasonable basis for determining that the information the agency relies on for making accrediting decisions is accurate;

(5) Provides the institution or program with a detailed written report that clearly identifies any deficiencies in the institution's or program's compliance with the agency's standards; and

(6) Publishes any policies for retroactive application of an accreditation decision, which must not provide for an effective date that predates either—

(i) An earlier denial by the agency of accreditation or preaccreditation to the institution or program; or

(ii) The agency's formal approval of the institution or program for consideration in the agency's accreditation or preaccreditation process.

(c) Nothing in this part prohibits an agency, when special circumstances exist, to include innovative program delivery approaches or, when an undue hardship on students occurs, from applying equivalent written standards, policies, and procedures that provide alternative means of satisfying one or more of the requirements set forth in 34 CFR 602.16, 602.17, 602.19, 602.20,

602.22, and 602.24, as compared with written standards, policies, and procedures the agency ordinarily applies, if—

(1) The alternative standards, policies, and procedures, and the selection of institutions or programs to which they will be applied, are approved by the agency's decision-making body and otherwise meet the intent of the agency's expectations and requirements;

(2) The agency sets and applies equivalent goals and metrics for assessing the performance of institutions or programs;

(3) The agency's process for establishing and applying the alternative standards, policies, and procedures is set forth in its published accreditation manuals; and

(4) The agency requires institutions or programs seeking the application of alternative standards to demonstrate the need for an alternative assessment approach, that students will receive equivalent benefit, and that students will not be harmed through such application.

(d) Nothing in this part prohibits an agency from permitting the institution or program to be out of compliance with one or more of its standards, policies, and procedures adopted in satisfaction of §§ 602.16, 602.17, 602.19, 602.20, 602.22, and 602.24 for a period of time, as determined by the agency annually, not to exceed three years unless the agency determines there is good cause to extend the period of time, and if—

(1) The agency and the institution or program can show that the circumstances requiring the period of noncompliance are beyond the institution's or program's control, such as—

(i) A natural disaster or other catastrophic event significantly impacting an institution's or program's operations;

(ii) Accepting students from another institution that is implementing a teach-out or closing;

(iii) Significant and documented local or national economic changes, such as an economic recession or closure of a large local employer;

(iv) Changes relating to State licensure requirements;

(v) The normal application of the agency's standards creates an undue hardship on students; or

(vi) Instructors who do not meet the agency's typical faculty standards, but who are otherwise qualified by education or work experience, to teach courses within a dual or concurrent enrollment program, as defined in 20 U.S.C. 7801, or career and technical education courses;

(2) The grant of the period of noncompliance is approved by the agency's decision-making body;

(3) The agency projects that the institution or program has the resources necessary to achieve compliance with the standard, policy, or procedure postponed within the time allotted; and

(4) The institution or program demonstrates to the satisfaction of the agency that the period of noncompliance will not—

(i) Contribute to the cost of the program to the student without the student's consent;

(ii) Create any undue hardship on, or harm to, students; or

(iii) Compromise the program's academic quality.

(Authority: 20 U.S.C. 1099b)

■ 26. Section 602.19 is revised to read as follows:

§ 602.19 Monitoring and reevaluation of accredited institutions and programs.

(a) The agency must reevaluate, at regularly established intervals, the institutions or programs it has accredited or preaccredited.

(b) The agency must demonstrate it has, and effectively applies, monitoring and evaluation approaches that enable the agency to identify problems with an institution's or program's continued compliance with agency standards and that take into account institutional or program strengths and stability. These approaches must include periodic reports, and collection and analysis of key data and indicators, identified by the agency, including, but not limited to, fiscal information and measures of student achievement, consistent with the provisions of § 602.16(g). This provision does not require institutions or programs to provide annual reports on each specific accreditation criterion.

(c) Each agency must monitor overall growth of the institutions or programs it accredits and, at least annually, collect head-count enrollment data from those institutions or programs.

(d) Institutional accrediting agencies must monitor the growth of programs at institutions experiencing significant enrollment growth, as reasonably defined by the agency.

(e) Any agency that has notified the Secretary of a change in its scope in accordance with § 602.27(a) must monitor the headcount enrollment of each institution it has accredited that offers distance education or correspondence courses. The Secretary will require a review, at the next meeting of the National Advisory Committee on Institutional Quality and Integrity, of any change in scope

undertaken by an agency if the enrollment of an institution that offers distance education or correspondence courses that is accredited by such agency increases by 50 percent or more within any one institutional fiscal year. If any such institution has experienced an increase in head-count enrollment of 50 percent or more within one institutional fiscal year, the agency must report that information to the Secretary within 30 days of acquiring such data.

(Authority: 20 U.S.C. 1099b)

■ 27. Section 602.20 is revised to read as follows:

§ 602.20 Enforcement of standards.

(a) If the agency's review of an institution or program under any standard indicates that the institution or program is not in compliance with that standard, the agency must—

(1) Follow its written policy for notifying the institution or program of the finding of noncompliance;

(2) Provide the institution or program with a written timeline for coming into compliance that is reasonable, as determined by the agency's decision-making body, based on the nature of the finding, the stated mission, and educational objectives of the institution or program. The timeline may include intermediate checkpoints on the way to full compliance and must not exceed the lesser of four years or 150 percent of the—

(i) Length of the program in the case of a programmatic accrediting agency; or

(ii) Length of the longest program at the institution in the case of an institutional accrediting agency;

(3) Follow its written policies and procedures for granting a good cause extension that may exceed the standard timeframe described in paragraph (a)(2) of this section when such an extension is determined by the agency to be warranted; and

(4) Have a written policy to evaluate and approve or disapprove monitoring or compliance reports it requires, provide ongoing monitoring, if warranted, and evaluate an institution's or program's progress in resolving the finding of noncompliance.

(b) Notwithstanding paragraph (a) of this section, the agency must have a policy for taking an immediate adverse action, and take such action, when the agency has determined that such action is warranted.

(c) If the institution or program does not bring itself into compliance within the period specified in paragraph (a) of this section, the agency must take adverse action against the institution or program, but may maintain the

institution's or program's accreditation or preaccreditation until the institution or program has had reasonable time to complete the activities in its teach-out plan or to fulfill the obligations of any teach-out agreement to assist students in transferring or completing their programs.

(d) An agency that accredits institutions may limit the adverse or other action to particular programs that are offered by the institution or to particular additional locations of an institution, without necessarily taking action against the entire institution and all of its programs, provided the noncompliance was limited to that particular program or location.

(e) All adverse actions taken under this subpart are subject to the arbitration requirements in 20 U.S.C. 1099b(e).

(f) An agency is not responsible for enforcing requirements in 34 CFR 668.14, 668.15, 668.16, 668.41, or 668.46, but if, in the course of an agency's work, it identifies instances or potential instances of noncompliance with any of these requirements, it must notify the Department.

(g) The Secretary may not require an agency to take action against an institution or program that does not participate in any title IV, HEA or other Federal program as a result of a requirement specified in this part.

(Authority: 20 U.S.C. 1099b)

■ 28. Section 602.21 is amended by revising paragraphs (a) and (c) and adding paragraph (d) to read as follows:

§ 602.21 Review of standards.

(a) The agency must maintain a comprehensive systematic program of review that involves all relevant constituencies and that demonstrates that its standards are adequate to evaluate the quality of the education or training provided by the institutions and programs it accredits and relevant to the educational or training needs of students.

* * * * *

(c) If the agency determines, at any point during its systematic program of review, that it needs to make changes to its standards, the agency must initiate action within 12 months to make the changes and must complete that action within a reasonable period of time.

(d) Before finalizing any changes to its standards, the agency must—

(1) Provide notice to all of the agency's relevant constituencies, and other parties who have made their interest known to the agency, of the changes the agency proposes to make;

(2) Give the constituencies and other interested parties adequate opportunity

to comment on the proposed changes; and

(3) Take into account and be responsive to any comments on the proposed changes submitted timely by the relevant constituencies and other interested parties.

* * * * *

■ 29. Section 602.22 is revised to read as follows:

§ 602.22 Substantive changes and other reporting requirements.

(a)(1) If the agency accredits institutions, it must maintain adequate substantive change policies that ensure that any substantive change, as defined in this section, after the agency has accredited or preaccredited the institution does not adversely affect the capacity of the institution to continue to meet the agency's standards. The agency meets this requirement if—

(i) The agency requires the institution to obtain the agency's approval of the substantive change before the agency includes the change in the scope of accreditation or preaccreditation it previously granted to the institution; and

(ii) The agency's definition of substantive change covers high-impact, high-risk changes, including at least the following:

(A) Any substantial change in the established mission or objectives of the institution or its programs.

(B) Any change in the legal status, form of control, or ownership of the institution.

(C) The addition of programs that represent a significant departure from the existing offerings or educational programs, or method of delivery, from those that were offered or used when the agency last evaluated the institution.

(D) The addition of graduate programs by an institution that previously offered only undergraduate programs or certificates.

(E) A change in the way an institution measures student progress, including whether the institution measures progress in clock hours or credit-hours, semesters, trimesters, or quarters, or uses time-based or non-time-based methods.

(F) A substantial increase in the number of clock hours or credit hours awarded, or an increase in the level of credential awarded, for successful completion of one or more programs.

(G) The acquisition of any other institution or any program or location of another institution.

(H) The addition of a permanent location at a site at which the institution is conducting a teach-out for students of another institution that has ceased

operating before all students have completed their program of study.

(I) The addition of a new location or branch campus, except as provided in paragraph (c) of this section. The agency's review must include assessment of the institution's fiscal and administrative capability to operate the location or branch campus, the regular evaluation of locations, and verification of the following:

(1) Academic control is clearly identified by the institution.

(2) The institution has adequate faculty, facilities, resources, and academic and student support systems in place.

(3) The institution is financially stable.

(4) The institution had engaged in long-range planning for expansion.

(J) Entering into a written arrangement under 34 CFR 668.5 under which an institution or organization not certified to participate in the title IV, HEA programs offers more than 25 and up to 50 percent of one or more of the accredited institution's educational programs.

(K) Addition of each direct assessment program.

(2)(i) For substantive changes under only paragraph (a)(1)(ii)(C), (E), (F), (H), or (J) of this section, the agency's decision-making body may designate agency senior staff to approve or disapprove the request in a timely, fair, and equitable manner; and

(ii) In the case of a request under paragraph (a)(1)(ii)(J) of this section, the agency must make a final decision within 90 days of receipt of a materially complete request, unless the agency or its staff determine significant circumstances related to the substantive change require a review by the agency's decision-making body to occur within 180 days.

(b) Institutions that have been placed on probation or equivalent status, have been subject to negative action by the agency over the prior three academic years, or are under a provisional certification, as provided in 34 CFR 668.13, must receive prior approval for the following additional changes (all other institutions must report these changes within 30 days to their accrediting agency):

(1) A change in an existing program's method of delivery.

(2) An aggregate change of 25 percent or more of the clock hours, credit hours, or content of a program since the agency's most recent accreditation review.

(3) The development of customized pathways or abbreviated or modified courses or programs to—

(i) Accommodate and recognize a student's existing knowledge, such as knowledge attained through employment or military service; and

(ii) Close competency gaps between demonstrated prior knowledge or competency and the full requirements of a particular course or program.

(4) Entering into a written arrangement under 34 CFR 668.5 under which an institution or organization not certified to participate in the title IV, HEA programs offers up to 25 percent of one or more of the accredited institution's educational programs.

(c) Institutions that have successfully completed at least one cycle of accreditation and have received agency approval for the addition of at least two additional locations as provided in paragraph (a)(1)(ii)(I) of this section, and that have not been placed on probation or equivalent status or been subject to a negative action by the agency over the prior three academic years, and that are not under a provisional certification, as provided in 34 CFR 668.13, need not apply for agency approval of subsequent additions of locations, and must report these changes to the accrediting agency within 30 days, if the institution has met criteria established by the agency indicating sufficient capacity to add additional locations without individual prior approvals, including, at a minimum, satisfactory evidence of a system to ensure quality across a distributed enterprise that includes—

(1) Clearly identified academic control;

(2) Regular evaluation of the locations;

(3) Adequate faculty, facilities, resources, and academic and student support systems;

(4) Financial stability; and

(5) Long-range planning for expansion.

(d) The agency must have an effective mechanism for conducting, at reasonable intervals, visits to a representative sample of additional locations approved under paragraphs (a)(1)(ii)(H) and (I) of this section.

(e) The agency may determine the procedures it uses to grant prior approval of the substantive change. However, these procedures must specify an effective date, on which the change is included in the program's or institution's grant of accreditation or preaccreditation. The date of prior approval must not pre-date either an earlier agency denial of the substantive change, or the agency's formal acceptance of the application for the substantive change for inclusion in the program's or institution's grant of accreditation or preaccreditation. An

agency may designate the date of a change in ownership as the effective date of its approval of that substantive change if the accreditation decision is made within 30 days of the change in ownership. Except as provided in paragraphs (d) and (f) of this section, an agency may require a visit before granting such an approval.

(f) Except as provided in paragraph (c) of this section, if the agency's accreditation of an institution enables the institution to seek eligibility to participate in title IV, HEA programs, the agency's procedures for the approval of an additional location that is not a branch campus where at least 50 percent of an educational program is offered must include—

(1) A visit, within six months, to each additional location the institution establishes, if the institution—

(i) Has a total of three or fewer additional locations;

(ii) Has not demonstrated, to the agency's satisfaction, that the additional location is meeting all of the agency's standards that apply to that additional location; or

(iii) Has been placed on warning, probation, or show cause by the agency or is subject to some limitation by the agency on its accreditation or preaccreditation status;

(2) A mechanism for conducting, at reasonable intervals, visits to a representative sample of additional locations of institutions that operate more than three additional locations; and

(3) A mechanism, which may, at the agency's discretion, include visits to additional locations, for ensuring that accredited and preaccredited institutions that experience rapid growth in the number of additional locations maintain education quality.

(g) The purpose of the visits described in paragraph (f) of this section is to verify that the additional location has the personnel, facilities, and resources the institution claimed it had in its application to the agency for approval of the additional location.

(h) The agency's substantive change policy must define when the changes made or proposed by an institution are or would be sufficiently extensive to require the agency to conduct a new comprehensive evaluation of that institution.

(Authority: 20 U.S.C. 1099b)

■ 30. Section 602.23 is amended by:

■ a. Revising paragraphs (a)(2), (a)(5) introductory text, and (d);

■ b. Redesignating paragraph (f) as paragraph (g); and

■ c. Adding a new paragraph (f).

The revisions and addition read as follows:

§ 602.23 Operating procedures all agencies must have.

(a) * * *

(2) The procedures that institutions or programs must follow in applying for accreditation, preaccreditation, or substantive changes and the sequencing of those steps relative to any applications or decisions required by States or the Department relative to the agency's preaccreditation, accreditation, or substantive change decisions;

* * * * *

(5) A list of the names, academic and professional qualifications, and relevant employment and organizational affiliations of—

* * * * *

(d) If an institution or program elects to make a public disclosure of its accreditation or preaccreditation status, the agency must ensure that the institution or program discloses that status accurately, including the specific academic or instructional programs covered by that status and the name and contact information for the agency.

* * * * *

(f)(1) If preaccreditation is offered—

(i) The agency's preaccreditation policies must limit the status to institutions or programs that the agency has determined are likely to succeed in obtaining accreditation;

(ii) The agency must require all preaccredited institutions to have a teach-out plan, which must ensure students completing the teach-out would meet curricular requirements for professional licensure or certification, if any, and which must include a list of academic programs offered by the institution and the names of other institutions that offer similar programs and that could potentially enter into a teach-out agreement with the institution;

(iii) An agency that denies accreditation to an institution it has preaccredited may maintain the institution's preaccreditation for currently enrolled students until the institution has had a reasonable time to complete the activities in its teach-out plan to assist students in transferring or completing their programs, but for no more than 120 days unless approved by the agency for good cause; and

(iv) The agency may not move an accredited institution or program from accredited to preaccredited status unless, following the loss of accreditation, the institution or program applies for initial accreditation and is awarded preaccreditation status under

the new application. Institutions that participated in the title IV, HEA programs before the loss of accreditation are subject to the requirements of 34 CFR 600.11(c).

(2) All credits and degrees earned and issued by an institution or program holding preaccreditation from a nationally recognized agency are considered by the Secretary to be from an accredited institution or program.

* * * * *

■ 31. Section 602.24 is revised to read as follows:

§ 602.24 Additional procedures certain institutional agencies must have.

If the agency is an institutional accrediting agency and its accreditation or preaccreditation enables those institutions to obtain eligibility to participate in title IV, HEA programs, the agency must demonstrate that it has established and uses all of the following procedures:

(a) *Branch campus.* The agency must require the institution to notify the agency if it plans to establish a branch campus and to submit a business plan for the branch campus that describes—

(1) The educational program to be offered at the branch campus; and

(2) The projected revenues and expenditures and cash flow at the branch campus.

(b) *Site visits.* The agency must undertake a site visit to a new branch campus or following a change of ownership or control as soon as practicable, but no later than six months, after the establishment of that campus or the change of ownership or control.

(c) *Teach-out plans and agreements.*

(1) The agency must require an institution it accredits to submit a teach-out plan as defined in 34 CFR 600.2 to the agency for approval upon the occurrence of any of the following events:

(i) For a nonprofit or proprietary institution, the Secretary notifies the agency of a determination by the institution's independent auditor expressing doubt about the institution's ability to operate as a going concern or indicating an adverse opinion or a finding of material weakness related to financial stability.

(ii) The agency acts to place the institution on probation or equivalent status.

(iii) The Secretary notifies the agency that the institution is participating in title IV, HEA programs under a provisional program participation agreement and the Secretary has required a teach-out plan as a condition of participation.

(2) The agency must require an institution it accredits or preaccredits to submit a teach-out plan and, if practicable, teach-out agreements (as defined in 34 CFR 600.2) to the agency for approval upon the occurrence of any of the following events:

(i) The Secretary notifies the agency that it has placed the institution on the reimbursement payment method under 34 CFR 668.162(c) or the heightened cash monitoring payment method requiring the Secretary's review of the institution's supporting documentation under 34 CFR 668.162(d)(2).

(ii) The Secretary notifies the agency that the Secretary has initiated an emergency action against an institution, in accordance with section 487(c)(1)(G) of the HEA, or an action to limit, suspend, or terminate an institution participating in any title IV, HEA program, in accordance with section 487(c)(1)(F) of the HEA.

(iii) The agency acts to withdraw, terminate, or suspend the accreditation or preaccreditation of the institution.

(iv) The institution notifies the agency that it intends to cease operations entirely or close a location that provides one hundred percent of at least one program, including if the location is being moved and is considered by the Secretary to be a closed school.

(v) A State licensing or authorizing agency notifies the agency that an institution's license or legal authorization to provide an educational program has been or will be revoked.

(3) The agency must evaluate the teach-out plan to ensure it includes a list of currently enrolled students, academic programs offered by the institution, and the names of other institutions that offer similar programs and that could potentially enter into a teach-out agreement with the institution.

(4) If the agency approves a teach-out plan that includes a program or institution that is accredited by another recognized accrediting agency, it must notify that accrediting agency of its approval.

(5) The agency may require an institution it accredits or preaccredits to enter into a teach-out agreement as part of its teach-out plan.

(6) The agency must require a closing institution to include in its teach-out agreement—

(i) A complete list of students currently enrolled in each program at the institution and the program requirements each student has completed;

(ii) A plan to provide all potentially eligible students with information about how to obtain a closed school discharge

and, if applicable, information on State refund policies;

(iii) A record retention plan to be provided to all enrolled students that delineates the final disposition of teach-out records (e.g., student transcripts, billing, financial aid records);

(iv) Information on the number and types of credits the teach-out institution is willing to accept prior to the student's enrollment; and

(v) A clear statement to students of the tuition and fees of the educational program and the number and types of credits that will be accepted by the teach-out institution.

(7) The agency must require an institution it accredits or preaccredits that enters into a teach-out agreement, either on its own or at the request of the agency, to submit that teach-out agreement for approval. The agency may approve the teach-out agreement only if the agreement meets the requirements of 34 CFR 600.2 and this section, is consistent with applicable standards and regulations, and provides for the equitable treatment of students being served by ensuring that the teach-out institution—

(i) Has the necessary experience, resources, and support services to provide an educational program that is of acceptable quality and reasonably similar in content, delivery modality, and scheduling to that provided by the institution that is ceasing operations either entirely or at one of its locations; however, while an option via an alternate method of delivery may be made available to students, such an option is not sufficient unless an option via the same method of delivery as the original educational program is also provided;

(ii) Has the capacity to carry out its mission and meet all obligations to existing students; and

(iii) Demonstrates that it—

(A) Can provide students access to the program and services without requiring them to move or travel for substantial distances or durations; and

(B) Will provide students with information about additional charges, if any.

(8) Irrespective of any teach-out plan or signed teach-out agreement, the agency must not permit an institution to serve as a teach-out institution under the following conditions:

(i) The institution is subject to the conditions in paragraph (c)(1) or (2) of this section.

(ii) The institution is under investigation, subject to an action, or being prosecuted for an issue related to academic quality, misrepresentation,

fraud, or other severe matters by a law enforcement agency.

(9) The agency is permitted to waive requirements regarding the percentage of credits that must be earned by a student at the institution awarding the educational credential if the student is completing his or her program through a written teach-out agreement or transfer.

(10) The agency must require the institution to provide copies of all notifications from the institution related to the institution's closure or to teach-out options to ensure the information accurately represents students' ability to transfer credits and may require corrections.

(d) *Closed institution.* If an institution the agency accredits or preaccredits closes without a teach-out plan or agreement, the agency must work with the Department and the appropriate State agency, to the extent feasible, to assist students in finding reasonable opportunities to complete their education without additional charges.

(e) *Transfer of credit policies.* The accrediting agency must confirm, as part of its review for initial accreditation or preaccreditation, or renewal of accreditation, that the institution has transfer of credit policies that—

(1) Are publicly disclosed in accordance with § 668.43(a)(11); and

(2) Include a statement of the criteria established by the institution regarding the transfer of credit earned at another institution of higher education.

(f) *Agency designations.* In its accrediting practice, the agency must—

(1) Adopt and apply the definitions of “branch campus” and “additional location” in 34 CFR 600.2;

(2) On the Secretary's request, conform its designations of an institution's branch campuses and additional locations with the Secretary's if it learns its designations diverge; and

(3) Ensure that it does not accredit or preaccredit an institution comprising fewer than all of the programs, branch campuses, and locations of an institution as certified for title IV participation by the Secretary, except with notice to and permission from the Secretary.

(Authority: 20 U.S.C. 1099b)

■ 32. Section 602.25 is amended by revising paragraphs (f)(1)(iii) and (iv) to read as follows:

§ 602.25 Due process.

* * * * *

(f) * * *

(1) * * *

(iii) Does not serve only an advisory or procedural role, and has and uses the

authority to make the following decisions: To affirm, amend, or remand adverse actions of the original decision-making body; and

(iv) Affirms, amends, or remands the adverse action. A decision to affirm or amend the adverse action is implemented by the appeals panel or by the original decision-making body, at the agency's option; however, in the event of a decision by the appeals panel to remand the adverse action to the original decision-making body for further consideration, the appeals panel must explain the basis for a decision that differs from that of the original decision-making body and the original decision-making body in a remand must act in a manner consistent with the appeals panel's decisions or instructions.

* * * * *

■ 33. Section 602.26 is amended by:

■ a. Redesignating paragraphs (b), (c), (d), and (e) as paragraphs (c), (d), (e), and (f);

■ b. Adding a new paragraph (b); and

■ c. Revising newly redesignated paragraphs (c), (d), (e), and (f).

The addition and revisions read as follows:

§ 602.26 Notification of accrediting decisions.

* * * * *

(b) Provides written notice of a final decision of a probation or equivalent status or an initiated adverse action to the Secretary, the appropriate State licensing or authorizing agency, and the appropriate accrediting agencies at the same time it notifies the institution or program of the decision and requires the institution or program to disclose such an action within seven business days of receipt to all current and prospective students;

(c) Provides written notice of the following types of decisions to the Secretary, the appropriate State licensing or authorizing agency, and the appropriate accrediting agencies at the same time it notifies the institution or program of the decision, but no later than 30 days after it reaches the decision:

(1) A final decision to deny, withdraw, suspend, revoke, or terminate the accreditation or preaccreditation of an institution or program.

(2) A final decision to take any other adverse action, as defined by the agency, not listed in paragraph (c)(1) of this section;

(d) Provides written notice to the public of the decisions listed in paragraphs (b) and (c) of this section within one business day of its notice to the institution or program;

(e) For any decision listed in paragraph (c) of this section, requires the institution or program to disclose the decision to current and prospective students within seven business days of receipt and makes available to the Secretary, the appropriate State licensing or authorizing agency, and the public, no later than 60 days after the decision, a brief statement summarizing the reasons for the agency's decision and the official comments that the affected institution or program may wish to make with regard to that decision, or evidence that the affected institution has been offered the opportunity to provide official comment;

(f) Notifies the Secretary, the appropriate State licensing or authorizing agency, the appropriate accrediting agencies, and, upon request, the public if an accredited or preaccredited institution or program—

(1) Decides to withdraw voluntarily from accreditation or preaccreditation, within 10 business days of receiving notification from the institution or program that it is withdrawing voluntarily from accreditation or preaccreditation; or

(2) Lets its accreditation or preaccreditation lapse, within 10 business days of the date on which accreditation or preaccreditation lapses.

* * * * *

■ 34. Section 602.27 is revised to read as follows:

§ 602.27 Other information an agency must provide the Department.

(a) The agency must submit to the Department—

(1) A list, updated annually, of its accredited and preaccredited institutions and programs, which may be provided electronically;

(2) A summary of the agency's major accrediting activities during the previous year (an annual data summary), if requested by the Secretary to carry out the Secretary's responsibilities related to this part;

(3) Any proposed change in the agency's policies, procedures, or accreditation or preaccreditation standards that might alter its—

(i) Scope of recognition, except as provided in paragraph (a)(4) of this section; or

(ii) Compliance with the criteria for recognition;

(4) Notification that the agency has expanded its scope of recognition to include distance education or correspondence courses as provided in section 496(a)(4)(B)(i)(I) of the HEA. Such an expansion of scope is effective

on the date the Department receives the notification;

(5) The name of any institution or program it accredits that the agency has reason to believe is failing to meet its title IV, HEA program responsibilities or is engaged in fraud or abuse, along with the agency's reasons for concern about the institution or program; and

(6) If the Secretary requests, information that may bear upon an accredited or preaccredited institution's compliance with its title IV, HEA program responsibilities, including the eligibility of the institution or program to participate in title IV, HEA programs.

(b) If an agency has a policy regarding notification to an institution or program of contact with the Department in accordance with paragraph (a)(5) or (6) of this section, it must provide for a case-by-case review of the circumstances surrounding the contact, and the need for the confidentiality of that contact. When the Department determines a compelling need for confidentiality, the agency must consider that contact confidential upon specific request of the Department.

■ 35. Add § 602.29 to read as follows:

§ 602.29 Severability.

If any provision of this subpart or its application to any person, act, or practice is held invalid, the remainder of the subpart or the application of its provisions to any person, act, or practice shall not be affected thereby.

(Authority: 20 U.S.C. 1099b)

§ 602.30 [Removed and Reserved]

■ 36. Section 602.30 is removed and reserved.

■ 37. Section 602.31 is revised to read as follows:

§ 602.31 Agency applications and reports to be submitted to the Department.

(a) *Applications for recognition or renewal of recognition.* An accrediting agency seeking initial or continued recognition must submit a written application to the Secretary. Each accrediting agency must submit an application for continued recognition at least once every five years, or within a shorter time period specified in the final recognition decision, and, for an agency seeking renewal of recognition, 24 months prior to the date on which the current recognition expires. The application, to be submitted concurrently with information required by § 602.32(a) and, if applicable, § 602.32(b), must consist of—

(1) A statement of the agency's requested scope of recognition;

(2) Documentation that the agency complies with the criteria for

recognition listed in subpart B of this part, including a copy of its policies and procedures manual and its accreditation standards; and

(3) Documentation of how an agency that includes or seeks to include distance education or correspondence courses in its scope of recognition applies its standards in evaluating programs and institutions it accredits that offer distance education or correspondence courses.

(b) *Applications for expansions of scope.* An agency seeking an expansion of scope by application must submit a written application to the Secretary. The application must—

(1) Specify the scope requested;

(2) Provide copies of any relevant standards, policies, or procedures developed and applied by the agency for its use in accrediting activities conducted within the expansion of scope proposed and documentation of the application of these standards, policies, or procedures; and

(3) Provide the materials required by § 602.32(j) and, if applicable, § 602.32(l).

(c) *Compliance or monitoring reports.* If an agency is required to submit a compliance or monitoring report, it must do so within 30 days following the end of the period for achieving compliance as specified in the decision of the senior Department official or Secretary, as applicable.

(d) *Review following an increase in headcount enrollment.* If an agency that has notified the Secretary in writing of its change in scope to include distance education or correspondence courses in accordance with § 602.27(a)(4) reports an increase in headcount enrollment in accordance with § 602.19(e) for an institution it accredits, or if the Department notifies the agency of such an increase at one of the agency's accredited institutions, the agency must, within 45 days of reporting the increase or receiving notice of the increase from the Department, as applicable, submit a report explaining—

(1) How the agency evaluates the capacity of the institutions or programs it accredits to accommodate significant growth in enrollment and to maintain education quality;

(2) The specific circumstances regarding the growth at the institution or program that triggered the review and the results of any evaluation conducted by the agency; and

(3) Any other information that the agency deems appropriate to demonstrate the effective application of the criteria for recognition or that the Department may require.

(e) *Consent to sharing of information.* By submitting an application for recognition, the agency authorizes Department staff throughout the application process and during any period of recognition—

(1) To observe its site visits to one or more of the institutions or programs it accredits or preaccredits, on an announced or unannounced basis;

(2) To visit locations where agency activities such as training, review and evaluation panel meetings, and decision meetings take place, on an announced or unannounced basis;

(3) To obtain copies of all documents the staff deems necessary to complete its review of the agency; and

(4) To gain access to agency records, personnel, and facilities.

(f) *Public availability of agency records obtained by the Department.*

(1) The Secretary's processing and decision-making on requests for public disclosure of agency materials reviewed under this part are governed by the Freedom of Information Act, 5 U.S.C. 552; the Trade Secrets Act, 18 U.S.C. 1905; the Privacy Act of 1974, as amended, 5 U.S.C. 552a; the Federal Advisory Committee Act, 5 U.S.C. Appdx. 1; and all other applicable laws. In recognition proceedings, agencies must, before submission to the Department—

(i) Redact the names and any other personally identifiable information about individual students and any other individuals who are not agents of the agency or of an institution or program the agency is reviewing;

(ii) Redact the personal addresses, personal telephone numbers, personal email addresses, Social Security numbers, and any other personally identifiable information regarding individuals who are acting as agents of the agency or of an institution or program under review;

(iii) Designate all business information within agency submissions that the agency believes would be exempt from disclosure under exemption 4 of the Freedom of Information Act (FOIA), 5 U.S.C. 552(b)(4). A blanket designation of all information contained within a submission, or of a category of documents, as meeting this exemption will not be considered a good faith effort and will be disregarded; and

(iv) Ensure documents submitted are only those required for Department review or as requested by Department officials.

(2) The agency may, but is not required to, redact the identities of institutions or programs that it believes are not essential to the Department's

review of the agency and may identify any other material the agency believes would be exempt from public disclosure under FOIA, the factual basis for the request, and any legal basis the agency has identified for withholding the document from public disclosure.

(3) The Secretary processes FOIA requests in accordance with 34 CFR part 5 and makes all documents provided to the Advisory Committee available to the public.

(4) Upon request by Department staff, the agency must disclose to Department staff any specific material the agency has redacted that Department staff believes is needed to conduct the staff review. Department staff will make any arrangements needed to ensure that the materials are not made public if prohibited by law.

(g) *Length of submissions.* The Secretary may publish reasonable, uniform limits on the length of submissions described in this section.

(Authority: 20 U.S.C. 1099b)

■ 38. Section 602.32 is revised to read as follows:

§ 602.32 Procedures for submitting an application for recognition, renewal of recognition, expansion of scope, compliance reports, and increases in enrollment.

(a) An agency preparing for renewing recognition will submit, 24 months prior to the date on which the current recognition expires, and in conjunction with the materials required by § 602.31(a), a list of all institutions or programs that the agency plans to consider for an award of initial or renewed accreditation over the next year or, if none, over the succeeding year, as well as any institutions or programs currently subject to compliance report review or reporting requirements. An agency that does not anticipate a review of any institution or program for an initial award of accreditation or renewed accreditation in the 24 months prior to the date of recognition expiration may submit a list of institutions or programs it has reviewed for an initial award of accreditation or renewal of accreditation at any time since the prior award of recognition or leading up to the application for an initial award of recognition.

(b) An agency seeking initial recognition must follow the policies and procedures outlined in paragraph (a) of this section, but in addition must also submit—

(1) Letters of support for the agency from at least three accredited institutions or programs, three educators, and, if appropriate, three

employers or practitioners, explaining the role for such an agency and the reasons for their support; and

(2) Letters from at least one program or institution that will rely on the agency as its link to a Federal program upon recognition of the agency or intends to seek multiple accreditation which will allow it in the future to designate the agency as its Federal link.

(c) Department staff publishes a notice of the agency's submission of an application in the **Federal Register** inviting the public to comment on the agency's compliance with the criteria for recognition and establishing a deadline for receipt of public comment.

(d) The Department staff analyzes the agency's application for initial or renewal of recognition, to determine whether the agency satisfies the criteria for recognition, taking into account all available relevant information concerning the compliance of the agency with those criteria and the agency's consistency in applying the criteria. The analysis of an application may include and, after January 1, 2021, will include—

(1)(i) Observations from site visits, on an announced or unannounced basis, to the agency or to a location where the agency conducts activities such as training, review and evaluation panel meetings, or decision meetings;

(ii) Observations from site visits, on an announced or unannounced basis, to one or more of the institutions or programs the agency accredits or preaccredits;

(iii) A file review at the agency of documents, at which time Department staff may retain copies of documents needed for inclusion in the administrative record;

(iv) Review of the public comments and other third-party information Department staff receives by the established deadline, the agency's responses to the third-party comments, as appropriate, and any other information Department staff obtains for purposes of evaluating the agency under this part; and

(v) Review of complaints or legal actions involving the agency; and

(2) Review of complaints or legal actions against an institution or program accredited or preaccredited by the agency, which may be considered but are not necessarily determinative of compliance.

(e) The Department may view as a negative factor when considering an application for initial, or expansion of scope of, recognition as proposed by an agency, among other factors, any evidence that the agency was part of a concerted effort to unnecessarily restrict

the qualifications necessary for a student to sit for a licensure or certification examination or otherwise be eligible for entry into a profession.

(f) Department staff's evaluation of an agency may also include a review of information directly related to institutions or programs accredited or preaccredited by the agency relative to their compliance with the agency's standards, the effectiveness of the standards, and the agency's application of those standards, but must make all materials relied upon in the evaluation available to the agency for review and comment.

(g) If, at any point in its evaluation of an agency seeking initial recognition, Department staff determines that the agency fails to demonstrate compliance with the basic eligibility requirements in §§ 602.10 through 602.15, the staff—

- (1) Returns the agency's application and provides the agency with an explanation of the deficiencies that caused staff to take that action; and
- (2) Requires that the agency withdraw its application and instructs the agency that it may reapply when the agency is able to demonstrate compliance.

(h) Except with respect to an application that has been returned and is withdrawn under paragraph (g) of this section, when Department staff completes its evaluation of the agency, the staff may and, after July 1, 2021, will—

- (1) Prepare a written draft analysis of the agency's application;
- (2) Send to the agency the draft analysis including any identified areas of potential noncompliance and all third-party comments and complaints, if applicable, and any other materials the Department received by the established deadline or is including in its review;
- (3) Invite the agency to provide a written response to the draft analysis and third-party comments or other material included in the review, specifying a deadline that provides at least 180 days for the agency's response;
- (4) Review the response to the draft analysis the agency submits, if any, and prepares the written final analysis—

- (i) Indicating that the agency is in full compliance, substantial compliance, or noncompliance with each of the criteria for recognition; and
- (ii) Recommending that the senior Department official approve, renew with compliance reporting requirements due in 12 months, renew with compliance reporting requirements with a deadline in excess of 12 months based on a finding of good cause and extraordinary circumstances, approve with monitoring or other reporting requirements, or

deny, limit, suspend, or terminate recognition; and

(5) Provide to the agency, no later than 30 days before the Advisory Committee meeting, the final staff analysis and any other available information provided to the Advisory Committee under § 602.34(c).

(i) The agency may request that the Advisory Committee defer acting on an application at that Advisory Committee meeting if Department staff fails to provide the agency with the materials described, and within the timeframes provided, in paragraphs (g)(3) and (5) of this section. If the Department staff's failure to send the materials in accordance with the timeframe described in paragraph (g)(3) or (5) of this section is due to the failure of the agency to, by the deadline established by the Secretary, submit reports to the Department, other information the Secretary requested, or its response to the draft analysis, the agency forfeits its right to request a deferral of its application.

(j) An agency seeking an expansion of scope, either as part of the regular renewal of recognition process or during a period of recognition, must submit an application to the Secretary, separately or as part of the policies and procedures outlined in paragraph (a) of this section, that satisfies the requirements of §§ 602.12(b) and 602.31(b) and—

- (1) States the reason for the expansion of scope request;
- (2) Includes letters from at least three institutions or programs that would seek accreditation under one or more of the elements of the expansion of scope; and
- (3) Explains how the agency must expand capacity to support the expansion of scope, if applicable, and, if necessary, how it will do so and how its budget will support that expansion of capacity.

(k) The Department may view as a negative factor when considering an application for initial or expansion of scope of recognition as proposed by an agency, among other factors, any evidence that the agency was part of a concerted effort to unnecessarily restrict the qualifications necessary for a student to sit for a licensure or certification examination or otherwise be eligible for entry into a profession.

(l) Department staff's evaluation of a compliance report includes review of public comments solicited by Department staff in the **Federal Register** received by the established deadline, the agency's responses to the third-party comments, as appropriate, other third-party information Department staff receives, and additional information

described in paragraphs (d) and (e) of this section, as appropriate.

(m) The Department will process an application for an expansion of scope, compliance report, or increase in enrollment report in accordance with paragraphs (c) through (h) of this section.

(Authority: 20 U.S.C. 1099b)

■ 39. Section 602.33 is revised to read as follows:

§ 602.33 Procedures for review of agencies during the period of recognition, including the review of monitoring reports.

(a) Department staff may review the compliance of a recognized agency with the criteria for recognition at any time—

(1) Based on the submission of a monitoring report as directed by a decision by the senior Department official or Secretary; or

(2) Based on any information that, as determined by Department staff, appears credible and raises concerns relevant to the criteria for recognition.

(b) The review may include, but need not be limited to, any of the activities described in § 602.32(d) and (f).

(c) If, in the course of the review, and after providing the agency the documentation concerning the inquiry and consulting with the agency, Department staff notes that one or more deficiencies may exist in the agency's compliance with the criteria for recognition or in the agency's effective application of those criteria, Department staff—

(1) Prepares a written draft analysis of the agency's compliance with the criteria of concern;

(2) Sends to the agency the draft analysis including any identified areas of noncompliance and all supporting documentation;

(3) Invites the agency to provide a written response to the draft analysis within 90 days; and

(4) Reviews any response provided by the agency, including any monitoring report submitted, and either—

- (i) Concludes the review;
- (ii) Continues monitoring of the agency's areas of deficiencies; or
- (iii)(A) Notifies the agency, in the event that the agency's response or monitoring report does not satisfy the staff, that the draft analysis will be finalized for presentation to the Advisory Committee;

(B) Publishes a notice in the **Federal Register** with an invitation for the public to comment on the agency's compliance with the criteria in question and establishing a deadline for receipt of public comment;

(C) Provides the agency with a copy of all public comments received and

invites a written response from the agency;

(D) Finalizes the staff analysis as necessary to reflect its review of any agency response and any public comment received;

(E) Provides to the agency, no later than 30 days before the Advisory Committee meeting, the final staff analysis and a recognition recommendation and any other information provided to the Advisory Committee under § 602.34(c); and

(F) Submits the matter for review by the Advisory Committee in accordance with § 602.34.

(Authority: 20 U.S.C. 1099b)

■ 40. Section 602.34 is revised to read as follows:

§ 602.34 Advisory Committee meetings.

(a) Department staff submits a proposed schedule to the Chairperson of the Advisory Committee based on anticipated completion of staff analyses.

(b) The Chairperson of the Advisory Committee establishes an agenda for the next meeting and, in accordance with the Federal Advisory Committee Act, presents it to the Designated Federal Official for approval.

(c) Before the Advisory Committee meeting, Department staff provides the Advisory Committee with—

(1) The agency's application for recognition, renewal of recognition, or expansion of scope when Advisory Committee review is required, or the agency's compliance report and supporting documentation submitted by the agency;

(2) The final Department staff analysis of the agency developed in accordance with § 602.32 or § 602.33, and any supporting documentation;

(3) The agency's response to the draft analysis;

(4) Any written third-party comments the Department received about the agency on or before the established deadline;

(5) Any agency response to third-party comments; and

(6) Any other information Department staff relied upon in developing its analysis.

(d) At least 30 days before the Advisory Committee meeting, the Department publishes a notice of the meeting in the **Federal Register** inviting interested parties to make oral presentations before the Advisory Committee.

(e) The Advisory Committee considers the materials provided under paragraph (c) of this section in a public meeting and invites Department staff, the agency, and other interested parties to

make oral presentations during the meeting. A transcript is made of all Advisory Committee meetings.

(f) The written motion adopted by the Advisory Committee regarding each agency's recognition will be made available during the Advisory Committee meeting. The Department will provide each agency, upon request, with a copy of the motion on recognition at the meeting. Each agency that was reviewed will be sent an electronic copy of the motion relative to that agency as soon as practicable after the meeting.

(g) After each meeting of the Advisory Committee, the Advisory Committee forwards to the senior Department official its recommendation with respect to each agency, which may include, but is not limited to—

(1)(i) For an agency that is fully compliant, approve initial or renewed recognition;

(ii) Continue recognition with a required compliance report to be submitted to the Department within 12 months from the decision of the senior Department official;

(iii) In conjunction with a finding of exceptional circumstances and good cause, continue recognition for a specified period in excess of 12 months pending submission of a compliance report;

(iv) In the case of substantial compliance, grant initial recognition or renewed recognition and recommend a monitoring report with a set deadline to be reviewed by Department staff to ensure that corrective action is taken, and full compliance is achieved or maintained (or for action by staff under § 602.33 if it is not); or

(v) Deny, limit, suspend, or terminate recognition;

(2) Grant or deny a request for expansion of scope; or

(3) Revise or affirm the scope of the agency.

(Authority: 20 U.S.C. 1099b)

■ 41. Section 602.35 is amended:

■ a. In paragraph (a), by adding the word "business" between "ten" and "days";

■ b. In paragraph (c)(1), by removing the words "documentary evidence" and adding in their place the word "documentation"; and

■ c. In paragraph (c)(2), by adding the word "business" between "ten" and "days" and adding a sentence to the end of the paragraph.

The addition reads as follows:

§ 602.35 Responding to the Advisory Committee's recommendation.

* * * * *

(c) * * *

(2) * * * No additional comments or new documentation may be submitted after the responses described in this paragraph are submitted.

* * * * *

■ 42. Section 602.36 is revised to read as follows:

§ 602.36 Senior Department official's decision.

(a) The senior Department official makes a decision regarding recognition of an agency based on the record compiled under §§ 602.32, 602.33, 602.34, and 602.35 including, as applicable, the following:

(1) The materials provided to the Advisory Committee under § 602.34(c).

(2) The transcript of the Advisory Committee meeting.

(3) The recommendation of the Advisory Committee.

(4) Written comments and responses submitted under § 602.35.

(5) New documentation submitted in accordance with § 602.35(c)(1).

(6) A communication from the Secretary referring an issue to the senior Department official's consideration under § 602.37(e).

(b) In the event that statutory authority or appropriations for the Advisory Committee ends, or there are fewer duly appointed Advisory Committee members than needed to constitute a quorum, and under extraordinary circumstances when there are serious concerns about an agency's compliance with subpart B of this part that require prompt attention, the senior Department official may make a decision on an application for renewal of recognition or compliance report on the record compiled under § 602.32 or § 602.33 after providing the agency with an opportunity to respond to the final staff analysis. Any decision made by the senior Department official under this paragraph from the Advisory Committee may be appealed to the Secretary as provided in § 602.37.

(c) Following consideration of an agency's recognition under this section, the senior Department official issues a recognition decision.

(d) Except with respect to decisions made under paragraph (f) or (g) of this section and matters referred to the senior Department official under § 602.37(e) or (f), the senior Department official notifies the agency in writing of the senior Department official's decision regarding the agency's recognition within 90 days of the Advisory Committee meeting or conclusion of the review under paragraph (b) of this section.

(e) The senior Department official's decision may include, but is not limited to, approving for recognition; approving with a monitoring report; denying, limiting, suspending, or terminating recognition following the procedures in paragraph (g) of this section; granting or denying an application for an expansion of scope; revising or affirming the scope of the agency; or continuing recognition pending submission and review of a compliance report under §§ 602.32 and 602.34 and review of the report by the senior Department official under this section.

(1)(i) The senior Department official approves recognition if the agency has demonstrated compliance or substantial compliance with the criteria for recognition listed in subpart B of this part. The senior Department official may determine that the agency has demonstrated compliance or substantial compliance with the criteria for recognition if the agency has a compliant policy or procedure in place but has not had the opportunity to apply such policy or procedure.

(ii) If the senior Department official approves recognition, the recognition decision defines the scope of recognition and the recognition period. The recognition period does not exceed five years, including any time during which recognition was continued to permit submission and review of a compliance report.

(iii) If the scope of recognition is less than that requested by the agency, the senior Department official explains the reasons for continuing or approving a lesser scope.

(2)(i) Except as provided in paragraph (e)(3) of this section, if the agency fails to comply with the criteria for recognition listed in subpart B of this part, the senior Department official denies, limits, suspends, or terminates recognition.

(ii) If the senior Department official denies, limits, suspends, or terminates recognition, the senior Department official specifies the reasons for this decision, including all criteria the agency fails to meet and all criteria the agency has failed to apply effectively.

(3)(i) If the senior Department official concludes an agency is noncompliant, the senior Department official may continue the agency's recognition, pending submission of a compliance report that will be subject to review in the recognition process, provided that—

(A) The senior Department official concludes that the agency will demonstrate compliance with, and effective application of, the criteria for recognition within 12 months from the

date of the senior Department official's decision; or

(B) The senior Department official identifies a deadline more than 12 months from the date of the decision by which the senior Department official concludes the agency will demonstrate full compliance with, and effective application of, the criteria for recognition, and also identifies exceptional circumstances and good cause for allowing the agency more than 12 months to achieve compliance and effective application.

(ii) In the case of a compliance report ordered under paragraph (e)(3)(i) of this section, the senior Department official specifies the criteria the compliance report must address, and the time period for achieving compliance and effective application of the criteria. The compliance report documenting compliance and effective application of criteria is due not later than 30 days after the end of the period specified in the senior Department official's decision.

(iii) If the record includes a compliance report required under paragraph (e)(3)(i) of this section, and the senior Department official determines that an agency has not complied with the criteria for recognition, or has not effectively applied those criteria, during the time period specified by the senior Department official in accordance with paragraph (e)(3)(i) of this section, the senior Department official denies, limits, suspends, or terminates recognition, except, in extraordinary circumstances, upon a showing of good cause for an extension of time as determined by the senior Department official and detailed in the senior Department official's decision. If the senior Department official determines good cause for an extension has been shown, the senior Department official specifies the length of the extension and what the agency must do during it to merit a renewal of recognition.

(f) If the senior Department official determines that the agency is substantially compliant, or is fully compliant but has concerns about the agency maintaining compliance, the senior Department official may approve the agency's recognition or renewal of recognition and require periodic monitoring reports that are to be reviewed and approved by Department staff.

(g) If the senior Department official determines, based on the record, that a decision to deny, limit, suspend, or terminate an agency's recognition may be warranted based on a finding that the agency is noncompliant with one or

more criteria for recognition, or if the agency does not hold institutions or programs accountable for complying with one or more of the agency's standards or criteria for accreditation that were not identified earlier in the proceedings as an area of noncompliance, the senior Department official provides—

(1) The agency with an opportunity to submit a written response addressing the finding; and

(2) The staff with an opportunity to present its analysis in writing.

(h) If relevant and material information pertaining to an agency's compliance with recognition criteria, but not contained in the record, comes to the senior Department official's attention while a decision regarding the agency's recognition is pending before the senior Department official, and if the senior Department official concludes the recognition decision should not be made without consideration of the information, the senior Department official either—

(1)(i) Does not make a decision regarding recognition of the agency; and

(ii) Refers the matter to Department staff for review and analysis under § 602.32 or § 602.33, as appropriate, and consideration by the Advisory Committee under § 602.34; or

(2)(i) Provides the information to the agency and Department staff;

(ii) Permits the agency to respond to the senior Department official and the Department staff in writing, and to include additional documentation relevant to the issue, and specifies a deadline;

(iii) Provides Department staff with an opportunity to respond in writing to the agency's submission under paragraph (h)(2)(ii) of this section, specifying a deadline; and

(iv) Issues a recognition decision based on the record described in paragraph (a) of this section, as supplemented by the information provided under this paragraph (h).

(i) No agency may submit information to the senior Department official, or ask others to submit information on its behalf, for purposes of invoking paragraph (h) of this section. Before invoking paragraph (h) of this section, the senior Department official will take into account whether the information, if submitted by a third party, could have been submitted in accordance with § 602.32(a) or § 602.33(e)(2).

(j) If the senior Department official does not reach a final decision to approve, deny, limit, suspend, or terminate an agency's recognition before the expiration of its recognition period, the senior Department official

automatically extends the recognition period until a final decision is reached.

(k) Unless appealed in accordance with § 602.37, the senior Department official's decision is the final decision of the Secretary.

(Authority: 20 U.S.C. 1099b)

■ 43. Section 602.37 is revised to read as follows:

§ 602.37 Appealing the senior Department official's decision to the Secretary.

(a) The agency may appeal the senior Department official's decision to the Secretary. Such appeal stays the decision of the senior Department official until final disposition of the appeal. If an agency wishes to appeal, the agency must—

(1) Notify the Secretary and the senior Department official in writing of its intent to appeal the decision of the senior Department official, no later than 10 business days after receipt of the decision;

(2) Submit its appeal to the Secretary in writing no later than 30 days after receipt of the decision; and

(3) Provide the senior Department official with a copy of the appeal at the same time it submits the appeal to the Secretary.

(b) The senior Department official may file a written response to the appeal. To do so, the senior Department official must—

(1) Submit a response to the Secretary no later than 30 days after receipt of a copy of the appeal; and

(2) Provide the agency with a copy of the senior Department official's response at the same time it is submitted to the Secretary.

(c) Once the agency's appeal and the senior Department official's response, if any, have been provided, no additional written comments may be submitted by either party.

(d) Neither the agency nor the senior Department official may include in its submission any new documentation it did not submit previously in the proceeding.

(e) On appeal, the Secretary makes a recognition decision, as described in § 602.36(e). If the decision requires a compliance report, the report is due within 30 days after the end of the period specified in the Secretary's decision. The Secretary renders a final decision after taking into account the senior Department official's decision, the agency's written submissions on appeal, the senior Department official's response to the appeal, if any, and the entire record before the senior Department official. The Secretary notifies the agency in writing of the

Secretary's decision regarding the agency's recognition.

(f) The Secretary may determine, based on the record, that a decision to deny, limit, suspend, or terminate an agency's recognition may be warranted based on a finding that the agency is noncompliant with, or ineffective in its application with respect to, a criterion or criteria for recognition not identified as an area of noncompliance earlier in the proceedings. In that case, the Secretary, without further consideration of the appeal, refers the matter to the senior Department official for consideration of the issue under § 602.36(g). After the senior Department official makes a decision, the agency may, if desired, appeal that decision to the Secretary.

(g) If relevant and material information pertaining to an agency's compliance with recognition criteria, but not contained in the record, comes to the Secretary's attention while a decision regarding the agency's recognition is pending before the Secretary, and if the Secretary concludes the recognition decision should not be made without consideration of the information, the Secretary either—

(1)(i) Does not make a decision regarding recognition of the agency; and

(ii) Refers the matter to Department staff for review and analysis under § 602.32 or § 602.33, as appropriate; review by the Advisory Committee under § 602.34; and consideration by the senior Department official under § 602.36; or

(2)(i) Provides the information to the agency and the senior Department official;

(ii) Permits the agency to respond to the Secretary and the senior Department official in writing, and to include additional documentation relevant to the issue, and specifies a deadline;

(iii) Provides the senior Department official with an opportunity to respond in writing to the agency's submission under paragraph (g)(2)(ii) of this section, specifying a deadline; and

(iv) Issues a recognition decision based on all the materials described in paragraphs (e) and (g) of this section.

(h) No agency may submit information to the Secretary, or ask others to submit information on its behalf, for purposes of invoking paragraph (g) of this section. Before invoking paragraph (g) of this section, the Secretary will take into account whether the information, if submitted by a third party, could have been submitted in accordance with § 602.32(a) or § 602.33(c).

(i) If the Secretary does not reach a final decision on appeal to approve, deny, limit, suspend, or terminate an agency's recognition before the expiration of its recognition period, the Secretary automatically extends the recognition period until a final decision is reached.

(Authority: 20 U.S.C. 1099b)

■ 44. Add § 602.39 to read as follows:

§ 602.39 Severability.

If any provision of this subpart or its application to any person, act, or practice is held invalid, the remainder of the subpart or the application of its provisions to any person, act, or practice shall not be affected thereby.

(Authority: 20 U.S.C. 1099b)

PART 603—SECRETARY'S RECOGNITION PROCEDURES FOR STATE AGENCIES

■ 45. The authority citation for part 603 continues to read as follows:

Authority: 20 U.S.C. 1094(C)(4), unless otherwise noted.

§ 603.24 [Amended]

■ 46. Section 603.24 is amended by removing paragraph (c) and redesignating paragraph (d) as paragraph (c).

■ 47. Add § 603.25 to read as follows:

§ 603.25 Severability.

If any provision of this subpart or its application to any person, act, or practice is held invalid, the remainder of the subpart or the application of its provisions to any person, act, or practice shall not be affected thereby.

PART 654—[REMOVED AND RESERVED]

■ 48. Under the authority of 20 U.S.C. 1099b, part 654 is removed and reserved.

PART 668—STUDENT ASSISTANCE GENERAL PROVISIONS

■ 49. The authority citation for part 668 continues to read as follows:

Authority: 20 U.S.C. 1001–1003, 1070g, 1085, 1088, 1091, 1092, 1094, 1099c–1, 1221–3, and 1231a, unless otherwise noted.

§ 668.8 [Amended]

■ 50. Section 668.8 is amended in paragraph (l)(2) introductory text by removing the words “in accordance with 34 CFR 602.24(f) or, if applicable, 34 CFR 603.24(c),”.

■ 51. Section 668.26 is amended by:

■ a. Redesignating paragraph (e) as paragraph (f); and

- b. Adding new paragraph (e).
The addition reads as follows:

§ 668.26 End of an institution's participation in the Title IV, HEA programs.

* * * * *

(e)(1) Notwithstanding the requirements of any other provision in this section, with agreement from the institution's accrediting agency and State, the Secretary may permit an institution to continue to originate, award, or disburse funds under a Title IV, HEA program for no more than 120 days following the date of a final, non-appealable decision by an accrediting agency to withdraw, suspend, or terminate accreditation, by a State authorizing agency to remove State authorization, or by the Secretary to end the institution's participation in title IV, HEA programs if—

(i) The institution has notified the Secretary of its plans to conduct an orderly closure in accordance with any applicable requirements of its accrediting agency;

(ii) As part of the institution's orderly closure, it is performing a teach-out that has been approved by its accrediting agency;

(iii) The institution agrees to abide by the conditions of the program participation agreement that was in effect on the date of the decision under paragraph (e)(1), except that it will originate, award, or disburse funds under that agreement only to enrolled students who can complete the program within 120 days of the decision under paragraph (e)(1) or who can transfer to a new institution; and

(iv) The institution presents the Secretary with acceptable written assurances that—

(A) The health and safety of the institution's students are not at risk;

(B) The institution has adequate financial resources to ensure that instructional services remain available to students during the teach-out; and

(C) The institution is not subject to probation or its equivalent, or adverse action by the institution's State authorizing body or accrediting agency, except as provided in paragraph (e)(1).

(2) An institution is prohibited from engaging in misrepresentation, consistent with 34 CFR part 668 subpart F and consistent with 34 CFR part 685 subpart B, about the nature of its teach-out plans, teach-out agreements, and transfer of credit.

* * * * *

- 52. Add § 668.29 to read as follows:

§ 668.29 Severability.

If any provision of this subpart or its application to any person, act, or

practice is held invalid, the remainder of the subpart or the application of its provisions to any person, act, or practice shall not be affected thereby.

§ 668.41 [Amended]

- 53. Section 668.41 is amended by:

■ a. Removing the word “calculates” and adding in its place the phrase “publishes or uses in advertising” in paragraph (d)(5)(i)(A);

■ b. Removing and reserving paragraph (d)(5)(ii); and

■ c. Removing paragraph (d)(5)(iii).

- 54. Section 668.43 is amended by:

■ a. Removing the word “and” at the end of paragraph (a)(5)(iii);

■ b. Adding the word “and” at the end of paragraph (a)(5)(iv);

■ c. Adding paragraph (a)(5)(v);

■ d. Removing the word “and” at the end of paragraph (a)(10)(iii);

■ e. Revising paragraphs (a)(11) and (12);

■ f. Adding paragraphs (a)(13) through (20); and

■ g. Adding paragraph (c).

The additions and revisions read as follows:

§ 668.43 Institutional information.

(a) * * *

(5) * * *

(v) If an educational program is designed to meet educational requirements for a specific professional license or certification that is required for employment in an occupation, or is advertised as meeting such requirements, information regarding whether completion of that program would be sufficient to meet licensure requirements in a State for that occupation, including—

(A) A list of all States for which the institution has determined that its curriculum meets the State educational requirements for licensure or certification;

(B) A list of all States for which the institution has determined that its curriculum does not meet the State educational requirements for licensure or certification; and

(C) A list of all States for which the institution has not made a determination that its curriculum meets the State educational requirements for licensure or certification;

* * * * *

(11) A description of the transfer of credit policies established by the institution, which must include a statement of the institution's current transfer of credit policies that includes, at a minimum—

(i) Any established criteria the institution uses regarding the transfer of

credit earned at another institution and any types of institutions or sources from which the institution will not accept credits;

(ii) A list of institutions with which the institution has established an articulation agreement; and

(iii) Written criteria used to evaluate and award credit for prior learning experience including, but not limited to, service in the armed forces, paid or unpaid employment, or other demonstrated competency or learning;

(12) A description in the program description of written arrangements the institution has entered into in accordance with § 668.5, including, but not limited to, information on—

(i) The portion of the educational program that the institution that grants the degree or certificate is not providing;

(ii) The name and location of the other institutions or organizations that are providing the portion of the educational program that the institution that grants the degree or certificate is not providing;

(iii) The method of delivery of the portion of the educational program that the institution that grants the degree or certificate is not providing; and

(iv) Estimated additional costs students may incur as the result of enrolling in an educational program that is provided, in part, under the written arrangement;

(13) The percentage of those enrolled, full-time students at the institution who—

(i) Are male;

(ii) Are female;

(iii) Receive a Federal Pell Grant; and

(iv) Are a self-identified member of a racial or ethnic group;

(14) If the institution's accrediting agency or State requires the institution to calculate and report a placement rate, the institution's placement in employment of, and types of employment obtained by, graduates of the institution's degree or certificate programs, gathered from such sources as alumni surveys, student satisfaction surveys, the National Survey of Student Engagement, the Community College Survey of Student Engagement, State data systems, or other relevant sources approved by the institution's accrediting agency as applicable;

(15) The types of graduate and professional education in which graduates of the institution's four-year degree programs enrolled, gathered from such sources as alumni surveys, student satisfaction surveys, the National Survey of Student Engagement, State data systems, or other relevant sources;

(16) The fire safety report prepared by the institution pursuant to § 668.49;

(17) The retention rate of certificate- or degree-seeking, first-time, full-time, undergraduate students entering the institution;

(18) Institutional policies regarding vaccinations;

(19) If the institution is required to maintain a teach-out plan by its accrediting agency, notice that the institution is required to maintain such teach-out plan and the reason that the accrediting agency required such plan under § 602.24(c)(1); and

(20) If an enforcement action or prosecution is brought against the institution by a State or Federal law enforcement agency in any matter where a final judgment against the institution, if rendered, would result in an adverse action by an accrediting agency against the institution, revocation of State authorization, or limitation, suspension, or termination of eligibility under title IV, notice of that fact.

* * * * *

(c)(1) If the institution has made a determination under paragraph (a)(5)(v) of this section that the program's curriculum does not meet the State educational requirements for licensure or certification in the State in which a prospective student is located, or if the institution has not made a determination regarding whether the program's curriculum meets the State educational requirements for licensure or certification, the institution must provide notice to that effect to the student prior to the student's enrollment in the program.

(2) If the institution makes a determination under paragraph

(a)(5)(v)(B) of this section that a program's curriculum does not meet the State educational requirements for licensure or certification in a State in which a student who is currently enrolled in such program is located, the institution must provide notice to that effect to the student within 14 calendar days of making such determination.

(3)(i) Disclosures under paragraphs (c)(1) and (2) of this section must be made directly to the student in writing, which may include through email or other electronic communication.

(ii)(A) For purposes of this paragraph (c), an institution must make a determination regarding the State in which a student is located in accordance with the institution's policies or procedures, which must be applied consistently to all students.

(B) The institution must, upon request, provide the Secretary with written documentation of its determination of a student's location under paragraph (c)(3)(ii)(A) of this section, including the basis for such determination.

(C) An institution must make a determination regarding the State in which a student is located at the time of the student's initial enrollment in an educational program and, if applicable, upon formal receipt of information from the student, in accordance with the institution's procedures under paragraph (c)(3)(ii)(A) of this section, that the student's location has changed to another State.

* * * * *

■ 55. Section 668.50 is revised to read as follows:

§ 668.50 Severability.

If any provision of this subpart or its application to any person, act, or practice is held invalid, the remainder of the subpart or the application of its provisions to any person, act, or practice shall not be affected thereby.

§ 668.188 [Amended]

■ 56. Section 668.188 is amended in paragraph (c) introductory text by removing the citation "34 CFR 602.3" and adding in its place "34 CFR 600.2".

■ 57. Add § 668.198 to read as follows:

§ 668.198 Severability.

If any provision of this subpart or its application to any person, act, or practice is held invalid, the remainder of the subpart or the application of its provisions to any person, act, or practice shall not be affected thereby.

PART 674—FEDERAL PERKINS LOAN PROGRAM

■ 58. The authority citation for part 674 continues to read as follows:

Authority: 20 U.S.C. 1070g, 1087aa–1087hh; Pub. L. 111–256, 124 Stat. 2643; unless otherwise noted.

§ 674.33 [Amended]

■ 59. Section 674.33 is amended in paragraph (g)(4)(i)(C) by removing the citation "34 CFR 602.2" and adding in its place "34 CFR 600.2".

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